

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
 ■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 1

Date: September 2, 2009

Subject: Information Relative to Possible Conflict of Interest

Recommendation*: Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

Background: In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Contractor/Agents	Subcontractors
4	07-003-2	CityCom Real Estate Services, Inc. <i>Michael R. Fortunato</i>	
8	C09-223	Smith Watts & Company, LLC <i>Mark Watts</i> <i>DJ Smith</i>	
10	C02019-05	LSA Associates Inc. <i>Rob McCann</i>	Habitat Restoration Sciences Inc.

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

13	C10005	SFPP, L.P. (Operating Partner of Kinder Morgan) <i>G.T. Reed</i>	None
17	C10001	Central Park Plaza, L.P. <i>Steve Hammitt</i>	
18		To Be Determined	

Financial Impact: This item has no direct impact on the budget.

Reviewed By: This item is prepared monthly for review by the Board of Directors and Policy Committee members.

BOARD OF DIRECTORS ATTENDANCE RECORD - 2009

Name	Jan	Feb	March	April	May	Special May 20 Mtg	June	July	Aug	Sept	Oct	Nov	Dec
Gary Ovitt Board of Supervisors	X	X		X	X	X	X	X					
Brad Mitzelfelt Board of Supervisors	X			X	X		X	X	X				
Paul Biane Board of Supervisors	X		X	X			X	X	X				
Josie Gonzales Board of Supervisors	X	X	X	X	X		X		X				
Neil Derry Board of Supervisors		X	X	X	X	X	X	X	X				
Charley Glasper City of Adelanto	X	X	X	X	X		X	X	X				
Rick Roelle Town of Apple Valley	X	X	X	X	X	X	X	X	X				
Julie McIntyre City of Barstow	X	X	X	X	X		X	X					
Bill Jahn City of Big Bear Lake	X	X	X	X	X	X	X	X	X				
Dennis Yates City of Chino	X	X	X	X	X	X	X	X	X				
Gwenn Norton-Perry City of Chino Hills		X	X	X	X			X	X				
Kelly Chastain City of Colton	X	X	X	X	X	X	X	X	X				
Mark Nuaimi City of Fontana	X	X	X	X	X	X	X	X	X				
Bea Cortes City of Grand Terrace	*	X	X	X	X	X	X	X	X				
Mike Leonard City of Hesperia	X	X		X	X		X	X	X				

X = member attended meeting. * = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.

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BOARD OF DIRECTORS ATTENDANCE RECORD - 2009

Name	Jan	Feb	March	April	May	Special May 20 Mtg	June	July	Aug	Sept	Oct	Nov	Dec
Larry McCallon City of Highland	X	X	X	X	X	X	X	X	*				
Rhodes 'Dusty' Rigsby City of Loma Linda	X	X	X	X	X	X	X	X					
Paul Eaton City of Montclair	X	X	X	X	*		X	X	X				
Jeff Williams City of Needles	X	X		X	X		X	X	X				
Alan Wapner City of Ontario	X	X	X	*	X		X	X	X				
Diane Williams City of Rancho Cucamonga	X	X	X	X	X	X	X	X	X				
Pat Gilbreath City of Redlands	X	X	X	X	X	X	X	X	X				
Grace Vargas City of Rialto	*	X	X	X	X	X	X	X	X				
Ed Scott City of Rialto	X	X	X	X	X		X	*	X				
Patrick Morris City of San Bernardino	X	X	X	X	X		X	X	X				
Jim Harris City of Twentynine Palms	X	X	X	X	X	X	X	X	X				
John Pomierski City of Upland	X	X	X		X	X	X	X	X				
Ryan McEachron City of Victorville	X	X	X	X	X	X	X	*	X				
Dick Riddell City of Yucaipa	X	X	X	X	X	X	X	X	X				
William Neeb Town of Yucca Valley	X	X	X	X	X	X	X	X	X				
Ray Wolfe Ex-Official Member	Jesus Galvan	X	X	X	Basem Muallem		Basem Muallem	X	X				

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BOARD OF DIRECTORS ATTENDANCE RECORD - 2008

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Gary Ovitt Board of Supervisors	X	X	X	X	X	X	X	X		X	X	X
Brad Mitzelfelt Board of Supervisors	X	X	X	X	X		X	X	X	X		
Paul Biane Board of Supervisors		X		X	X	X				X	X	
Dennis Hansberger Board of Supervisors	X	X		X	X		X	X	X		X	X
Neil Derry Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X
Josie Gonzales Board of Supervisors	X		X	X	X	X	X	X	X	X		
Jim Nehmens City of Adelanto	X	X	X		X	X	X	X	X	X	X	X
Charley Glasper City of Adelanto	X	X	X	X	X	X	X	X	*	X	X	X
Rick Roelle Town of Apple Valley	X	X	X	X	X	X		X	X	X	X	X
Lawrence Dale City of Barstow	X	X	X	X	X	X	X	X	X	X	X	X
Bill Jahn City of Big Bear Lake	X	X			X	X	X	X		X	X	X
Dennis Yates City of Chino	X	X	X		X	X	X	X	X		X	X
Gwenn Norton-Perry City of Chino Hills		X	X	X	X		*				X	
Kelly Chastain City of Colton	X	X	X	X	X	*	*	X	X	X	X	X
Mark Nuaimi City of Fontana	X	X	X		X	X	X	X	X	X	X	X
Bea Cortes City of Grand Terrace	X	X	X	X	X	X	X	X	X	X	X	X
Mike Leonard City of Hesperia	X	X	X	X	X	X	X		X	X	X	X
Larry McCallon City of Highland	X	X	X		X	X	*	*	X	X	X	X

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BOARD OF DIRECTORS ATTENDANCE RECORD - 2008

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Robert Christman City of Loma Linda	X	X		X	X	X	X					
Rhodes 'Dusty' Rigsby City of Loma Linda								X	X	X	X	X
Paul Eaton City of Montclair	X	X	X	X	X	X	X	X	X	X	X	X
Rebecca Valentine City of Needles		X	X	X	X	X	X	X	X	X	X	X
Paul Leon City of Ontario	X	X	X	X	X	*	X	X	X	X	X	X
Diane Williams City of Rancho Cucamonga	X	X	X	X	X	X	X	X	X	X	X	X
Pat Gilbreath City of Redlands	X	X	X	X	X	X	X	X	X	X	X	X
Grace Vargas City of Rialto	X	X	X		X		X	*	X			X
Patrick Morris City of San Bernardino	X	X		X	X	X		X	X	X	X	X
Jim Harris City of Twentynine Palms		X	X	X	X	X	X	X	X	X	X	X
John Pomierski City of Upland	X	X	X		X	X		X	X			X
Mike Rothschild City of Victorville	X	X	X	X	X	X	X	X	X	X	X	
Ryan McEachron City of Victorville												X
Dick Riddell City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	X
Chad Mayes Town of Yucca Valley	X	X	*	*								
William Neeb Town of Yucca Valley					X	X	X	X	X	X	X	X
Michael Perovich Ex-Official Member	X	X		X	X	Karla Sutliff	Karla Sutliff	Karla Sutliff	Karla Sutliff			
Ray Wolfe Ex-Official Member										X	X	X

X = member attended meeting.

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
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Minute Action

AGENDA ITEM: 3

Date: September 2, 2009

Subject: Procurement Report for July 2009

Recommendation:* Receive Monthly Procurement Report.

Background: The Board of Directors approved the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997. The Executive Director, or designee, is authorized to approve Purchase Orders up to an amount of \$50,000. All procurements for supplies and services approved by the Executive Director, or his designee, in excess of \$5,000 shall be routinely reported to the Administrative Committee and to the Board of Directors.

Attached are the purchase orders in excess of \$5,000 to be reported to the Administrative Committee for the month of July 2009.

Financial Impact: This item imposes no impact on the FY 2009/2010 Budget. Presentation of the monthly procurement report will demonstrate compliance with the Contracting and Procurement Policy (Policy No. 11000).

Reviewed By: This was unanimously reviewed by the Administrative Committee on August 12, 2009.

Responsible Staff: William Stawarski, Chief Financial Officer

*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

PURCHASE ORDERS ISSUED FOR JULY 2009

	Vendor	Purpose	Sole Source Y/N	Amount
10AMS	Archive Management Service	Offsite storage for agency documents and files	No	\$ 10,000.00
10COSTCO1	COSTCO Wholesale	Office and meeting supplies	No	6,000.00
10GIPP	Garden Interiors and Party Planners	Office plant service	No	5,000.00
10PBP	Postage By Phone	Postage meter refill	No	24,000.00
10PP7	Purchase Power	Postage meter supplies	No	6,900.00
10SI	Staples, Inc	Office supplies	No	22,000.00
10TVDC	TELEDATA Voice & Data Communications	Telephone equipment, repairs, software & supplies	No	8,000.00
P10008	Gladstein, Neandross & Associates	Services for Clean Transportation Corridor (CTC) activities, assist public and private entities in securing funding for clean fuel activities and projects	Yes – Consultant team carries unique expertise in this area and has match funding to provide these services from a variety of sources/agencies	25,000.00
P10009	Bernard Arroyo	Provide consulting and technical support for the call box program and other motorist aid programs	Yes – Consultant carries unique expertise in this area not offered by other consultants	5,000.00
P10010	Bernard Arroyo	Provide consulting, technical support, data analysis and other assistance for the freeway service patrol program	Yes – Consultant carries unique expertise in this area not offered by other consultants	30,000.00
P10011	ITERIS	Provide consulting, technical support, analysis and assistance for Intelligent Transportation Systems Projects	Yes – Consultant carries a unique expertise in the area not offered by other consultants	5,000.00
P10012	Jill Kollmann & Associates	Consulting and technical support for the rideshare programs	Yes – Vendor carries unique expertise in this area and has been used in the past	40,000.00

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	Vendor	Purpose	Sole Source Y/N	Amount
P10014	UCLA Public Policy Program	SANBAG Co-sponsorship of the 2009 Arrowhead Symposium	No	6,000.00
P10015	Millennium Consulting, LLC	Consulting services for the calculation of the FY 09/10 ICAP and assistance with the 08/09 ICAP field audit	Yes – Millennium has unique experience working with Caltrans in auditing ICAP plans	45,000.00
P10017	Bearcom	Provide miscellaneous equipment needs, technical installation and repair support for radio units/systems in the FSP tow trucks and FSP CHP units	Yes – Vendor has installed radio equipment in our FSP trucks in the past as well as installed the repeater and antenna at the Heaps Peak location	5,000.00
P10020	Trillium Insight, Inc.	Provide labor, materials, travel, create data, evaluate data/trip planner results and train agencies to maintain Google transit data	No	24,949.00
P10022	Raymond Gorski	Provide air quality analysis of TCM's and candidate CMAQ projects	Yes – Mr. Gorski has unique experience relative to air quality analysis and CMAQ funded projects	20,000.00
P10026	LA County Metropolitan Transportation	Reimburse for SANBAG's share of expenses for Regional Rideshare, Marketing & Outreach	No	15,014.00
P10036	Le Beau Emblem	San Bernardino Freeway Service Patrol patches	Yes – Vendor created the original template for the patches so there are no set up charges	5,000.00
P10038	Faust Printing, Inc	Miscellaneous printing needs throughout the fiscal year	Yes – Vendor has required stock on hand and has reliably met prior deadlines	5,000.00
P10049	Accountemps	Finance temporary services for implementation of new EDEN system	No	45,000.00
			TOTAL PURCHASE ORDERS ISSUED	\$357,863.00

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Minute Action

AGENDA ITEM: 4

Date: September 2, 2009

Subject: San Bernardino Santa Fe Depot Property Management

Recommendation:* Exercise the option to extend Contract 07-003, and approve Amendment No. 2, with CityCom Real Estate Services, Inc. for the San Bernardino Santa Fe Depot property and facility management increasing the compensation by \$48,594.00 for a new total contract authority of \$182,994.00 as identified in the Financial Impact Section.

Background: In June 2006, the Board approved Contract 07-003 with CityCom Real Estate Services, Inc. The initial term of the contract was two years, ending June 30, 2008. The contract contains two one-year extensions, each with a 4% inflation adjustment applied to the monthly management fee. In March 2008, the Board approved the first one-year extension.

Staff is recommending approval of the contract amendment (see attached contract amendment) authorizing the second one-year extension with the term ending June 30, 2010, and with a monthly management fee increase of 4%.

A portion of the management fee is paid by the occupying tenants of the building, including SANBAG, with the remaining portion equally split between SANBAG

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Approved
Board of Directors

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

and the City of San Bernardino. As more of the Depot space is occupied, the portion of the fee split by SANBAG and the City will be reduced. In addition, CityCom will continue the current leasing commission for new tenants in the amount of 6% of the first and second year lease income; 5% of the third and fourth year lease income; 4% of the fifth year lease income; and 2% of the lease income for the remainder of the lease term.

Financial Impact: This item is consistent with the adopted budget. This contract amendment will increase the monthly compensation for property management to \$4,049.50. The contract authority will be increased by \$48,594.00 for a new total of \$182,994.00. The additional funding necessary for this contract extension is included in this year's budget under Tasks IAF10 – Indirect and 80510000 – Building Operations. In addition, a portion of the management fee will be paid by rent from the Southern California Regional Rail Authority, Southern California Associated Governments and the City of San Bernardino.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Administrative Committee on August 12, 2009. Staff has discussed the contract extension with the City of San Bernardino staff and they are in agreement. The contract amendment has been reviewed and approved as to form by SANBAG legal counsel.

Responsible Staff: Duane A. Baker, Director of Management Services

SANBAG Contract No. 07-003-2

by and between

San Bernardino Associated Governments

and

CityCom Real Estate Services, Inc.

for

Property Management at the San Bernardino Santa Fe Depot

FOR ACCOUNTING PURPOSES ONLY

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>CCRES</u>	<input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>88,128.00</u>	Previous Amendments Total: \$ <u>134,400.00</u>
Contingency Amount: \$ _____	Previous Amendments Contingency Total: \$ _____
	Current Amendment: \$ <u>48,594.00</u>
	Current Amendment Contingency: \$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ 182,994.00

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
IAF10	5553	Indirect Alloc. 2010	_____	\$ <u>42,594.00</u>
80510000	5553	Rail Asset	_____	\$ <u>6,000.00</u>

Original Board Approved Contract Date: 6/7/06 Contract Start: 7/1/06 Contract End: 6/30/08
 New Amend. Approval (Board) Date: 8/5/09 Amend. Start: 7/1/09 Amend. End: 6/30/10

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>2009/10</u> \$ <u>48,594.00</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? ☒ Yes ☐ No
 If yes, which Task includes budget authority? _____
 If no, has the budget amendment been submitted? ☐ Yes ☐ No

CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☐ Intergovernmental ☒ Private ☐ Non-Local ☒ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☒ No ☐ Yes _____ %

Task Manager: Bill Stawarski Contract Manager: Duane Baker

Task Manager Signature: _____ Date: 8/11/09 Contract Manager Signature: _____ Date: 8/15/09

Chief Financial Officer Signature: _____ Date: _____

Amendment No. 2 to Agreement 07-003

**San Bernardino Santa Fe Depot Property Management Agreement
between
San Bernardino Associated Governments
and
CityCom Real Estate Services, Inc.**

This Amendment No 2 to Agreement 07-003 is made and entered into as of this 2nd day of September, 2009, by and between the San Bernardino Associated Governments ("SANBAG") and CityCom Real Estate Services, Inc. ("Manager").

WHEREAS, SANBAG and the City of San Bernardino ("CITY") jointly own certain real property in the City of San Bernardino, California, located at 1170 West Third Street, which property is known as the San Bernardino Santa Fe Depot ("the Depot"); and

WHEREAS, SANBAG has the exclusive right to enter into, amend or terminate all property management agreements at the depot, pursuant to SANBAG Cooperative Agreement 04-040 with the CITY; and

WHEREAS, the SANBAG Board approved Agreement 07-003 with MANAGER on June 7, 2006 for property management services for a two-year period, ending June 30, 2008 with SANBAG options to renew the Agreement for two (2) one-year extensions; and

WHEREAS, SANBAG desires to exercise its option to renew the Agreement for the second one year extension.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, SANBAG and MANAGER do hereby agree as follows:

1. Section 2 is replaced with the following:

2. Management Term.

The term of this Agreement shall commence on June 7, 2006, and shall continue through June 30, 2010.

2. Section 4(a) is replaced with the following:

4. Fees.

(a.) Property Management Fee – SANBAG shall pay MANAGER as compensation for the services rendered by MANAGER under this Agreement, including labor, materials, expenses and other reimbursable costs that are required and incurred by MANAGER in performing services under this Agreement, the sum of \$4,049.50 per month.

3. All other terms and conditions of Agreement 07-003 shall remain in full force and effect.

IN WITNESSTH WHEREOF, the Parties hereto have affixed their signatures the day and year first above written.

“SANBAG”

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

“MANAGER”

**CITYCOM REAL ESTATE
SERVICES, INC.**

By _____
Paul M. Eaton
President

By _____
Michael R. Fortunato
President

Dated: _____

Dated: _____

Approved as to legal form:

Jean-Rene Basle
SANBAG Counsel

Minute Action

AGENDA ITEM: 5

Date: September 2, 2009

Subject: Grant Application Update for the American Recovery and Reinvestment Act:
Transportation Investment Generating Economic Recovery (TIGER)
Discretionary Program

Recommendation: *

1. Receive status update.
2. Approve the I-10 Westbound Mixed Flow Lane Addition project and the Interstate 15/La Mesa/Nisqualli Interchange project as SANBAG's TIGER Grant candidates.
3. Approve a joint application with the Southern California Regional Rail Authority (SCRRA) and other Metrolink agencies for Positive Train Control (PTC).

Background: On July 1, 2009, the SANBAG Board approved a staff recommendation to include as many as four projects, the I-10 Mixed Flow Lane Addition project, the I-10 Auxiliary Lanes project, the Monte Vista Grade Separation project, and the Hunts Lane Grade Separation project, as TIGER Grant candidate projects to be included in SANBAG's TIGER Grant application package. The Board also approved continued consideration of the I-10 Citrus Interchange and the I-10 Cherry Interchange projects as potential TIGER candidates.

With the final release of the TIGER Grant Notice on June 17, 2009, staff consulted with Caltrans programming staff and worked closely with the Southern

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*Approved
Board of Directors*

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

California Consensus Group (SCCG) to identify the best candidate projects that would be successful in this competitive grant application process. During the July California Transportation Commission (CTC) meeting, Caltrans announced that they received a Notice of Interest for TIGER grants totaling over \$3 billion in California alone, yet each State will be awarded no more than \$300 million. It was made clear to staff that the competition will be extremely intense and that several critical criteria must be met:

- Projects for which construction can be completed by Feb 17, 2012 will receive clear priority. This suggests that only projects at or beyond the 95% point of Plans, Specifications, and Estimates (PS&E) should be considered.
- Projects must demonstrate significant long-term benefits for the nation and region as a return on the TIGER investment. Benefit is to be measured both in terms of the resulting facility or system improvement, and in its impact on the nation's economic competitiveness. This supports the candidacy of projects located on designated Trade Corridors of National Significance.
- Project funding package includes several sources of funds. Staff recommends considering only projects funded fully or in part with state or federal funds.
- The TIGER funds request should exceed \$20 million per project. Staff was informed that exemptions for smaller projects would be considered only for projects in rural counties.

Application of the above criteria and updating of information on projects approved for consideration by the SANBAG Board of Directors resulted in elimination of several previously considered projects and the addition of one project to the final TIGER Grant Application to the State and US Department of Transportation (USDOT):

1. A \$26.5 million TIGER grant is requested for the I-10 Mixed Flow Lane Addition project. The project is highly competitive in relation to both the Primary Selection Criteria and Secondary Selection Criteria identified in the TIGER legislation. As part of the justification, SANBAG is proposing an innovative "ripple effect" funding strategy designed to benefit not only the I-10 Project itself, but also the I-10/Citrus Interchange, the I-10/Cherry Interchange, and the I-10/Tippecanoe Interchange projects. All of these near-term projects have been considered fully funded with combinations of state, federal, and local funds but are now at risk of significant delays because of state fiscal issues and lower-than-expected local revenues. An award of the requested TIGER funds would allow at-risk State Corridor

Mobility Improvement Account (CMIA) funds to be reprogrammed from the candidate project to the I-10/ Tippecanoe project, thereby making it a CMIA project that would receive delivery commitment from CTC and Caltrans. Freed-up federal funds from Tippecanoe can be reprogrammed to offset the local funding shortfall on both the I-10 Citrus Interchange and I-10 Cherry Interchange projects. In effect, this funding strategy utilizes TIGER Grant funds as seed money to bolster delivery of a series of major at-risk projects and thereby support longer-term job creation along the I-10 Trade Corridor.

2. A \$23 million TIGER grant is requested for the I-15/La Mesa-Nisqualli Interchange project. This project is also highly competitive in relation to both the Primary Selection Criteria and Secondary Selection Criteria identified in the TIGER legislation. The project is recommended for its PS&E readiness, multiple funding sources, its location on the nationally significant I-15 Trade Corridor, and its key geographic location within the High Desert Region. The project is part of an on-going effort to expand and modernize the I-15 corridor and its interchanges through the High Desert that began with the I-15 widening from Victorville to Barstow. The I-15 La Mesa-Nisqualli Interchange is a key regional mobility project within the urbanized Victor Valley, designed to improve regional east-west mobility there and to support the Victor Valley's development as the newest element of the Southern California logistics system that serves as a vital connection between the United State's largest ports and the rest of the nation.

In addition to applications for these two projects, SANBAG supported a joint application for Positive Train Control (PTC) with Southern California Regional Rail Authority (SCRRA) and other Metrolink agencies. The application was submitted to the Southern California Consensus Group on July 30, 2009, to be forwarded to Caltrans for its TIGER Grant Application Committee review. Details of the state review/selection process are not yet known, but it appears there will be no statewide submittal to the USDOT. Staff continues to finalize the application and is prepared to submit the applications directly to the USDOT prior to the September 15, 2009 deadline.

Financial Impact: This item is consistent with the FY 2009/2010 budget.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on August 13, 2009 and the Mountain/Desert Policy Committee on August 21, 2009.

Responsible Staff: Ty Schuiling, Director of Planning and Programming

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 6

Date: September 2, 2009

Subject: Report on the passage of the Revised 2009-10 State Budget

Recommendation:* Receive report on the passage of the Revised 2009-10 State Budget

Background: On July 24, the State Legislature passed a budget package to address the chronic deficit. The revisions to the Budget solve a \$23.3 billion deficit, up from \$19.5 billion at the time of the May Revision (which, with the governor's target reserve of \$2 billion, the deficit was often cited as \$25.3 billion by the State Department of Finance), and includes a General Fund reserve of approximately \$921 million.

The \$30 billion budget package contains \$15.6 billion in program cuts, \$3.9 billion in additional revenue, \$2.1 billion in borrowing, and \$1.2 billion in payment deferrals (please see Attachment No. 1). The budget package also makes a number of reforms to several health and human services programs and continues monthly three-day furloughs for State employees. Overall, the budget package reduces General Fund expenditures to approximately \$84.1 billion, an 18 percent decrease from two years ago.

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*Approved
Board of Directors*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

As the budget resolution package moved to a final approval in July, two key elements became extremely controversial: (1) the diversion of local transportation gas tax revenue; and (2) the “securitization of redevelopment funds.” These two proposals, however, did not gain legislative support.

Transportation Related Impacts

Proposition 42

Proposition 42 was fully funded with no changes to Proposition 42 allocations. As a result, Proposition 42 funding will remain at \$1.7 billion and is distributed as follows:

- \$680 million to the State Transportation Improvement Program (STIP)
- \$340 million to the Public Transportation Account (PTA)
- \$680 million to local cities and counties

Spillover

The budget package essentially approved the Governor’s proposals on public transit funds. This includes new General Fund relief of \$561 million by directing *new* transit “spillover” revenues, totaling \$225 million for the current fiscal year, to the Mass Transportation Fund (MTF) to fund transportation-related debt service. Additionally, the budget package directed \$315 million in transit revenue formerly directed to home-to-school transportation, to transportation-related debt service. A budget trailer bill also diverted all spillover revenues to the MTF for fiscal years 2009-2010 through fiscal years 2012-2013. Previously, spillover formulas diverted portions of spillover revenue to the MTF with remaining revenues being deposited into the PTA.

The California Transit Association (CTA) stated that the diversion of transportation dollars for General Fund expenditures violates the state constitution. The Governor’s Office has stated its intent to appeal the lawsuit filed with the California Appeals court, which continues to leave open the issue of the legality of the State’s diversion of transportation dollars. If the State Supreme Court concurs with the Appeals Court sometime within the current fiscal year, further negotiations will need to occur as it is still unclear as to how and when

transit funds will be restored and whether repayment of previous year revenue diversions will take place.

Highway Users Tax Account (HUTA) transfer rejected

SANBAG's State advocate, Mark Watts, worked closely with CSAC and Self-Help Counties Coalition to defeat the HUTA take. The result of this effort helped defeat SBX4 30, a budget trailer bill requiring a full HUTA take without repayment.

What is HUTA?

California currently levies an 18 cent per gallon excise tax on gasoline. Approximately one-third of state excise gas tax revenues are transferred into the HUTA which is used to allocate gas tax revenues to cities and counties through a variety of formulas.

Originally, proposed revised budget package would have diverted nearly \$4 billion from a variety of local agency resources to offset General Fund expenditures.

With respect to the local government components of the budget package, there was a proposal (SBX4 30) to "take" \$1.7 billion of local gas tax subventions (also known as the "HUTA take"). The proposal was amended and included in SBX4 16 as a HUTA loan, with a 10-year repayment of \$200 million annually.

The Senate also adopted an amendment to the redevelopment agencies extension/securitization proposal (ABX4 27 and ABX4 26), which contained a trigger that would have "turned off" the HUTA take and the Proposition 1A (2004) securitization; the amendment added the \$1.7 billion shift from redevelopment agencies to the items that would have been triggered off.

When the Senate adopted the revised budget for FY 2009-10 it went to the Assembly for concurrence. The Assembly rejected the two budget measures approved by the Senate regarding the HUTA take-turned-loan and the funding shift for transportation debt servicing.

The Assembly's rejection of the transfer of the gas tax subvention created a \$1 billion shortfall in the revised budget package that proposed to bring the General Fund into balance. Nevertheless, a remnant of the overall package relating to the "deferral" of the HUTA funds was retained in the budget package.

The deferral of HUTA funds means that monthly HUTA payments are being deferred from July through December 2009 to be repaid at an unspecified date in the future sometime after January 10, 2010 (as specified in AB4X 16). While it has yet to be confirmed with the State Controller's Office, the California State Association of Counties (CSAC) interprets budget trailer bill language to mean that monthly HUTA payments will not be made starting this July 31st.

In addition to the HUTA deferral, the revised 2009-10 State budget also defers the first two quarterly payments (the October 2009 and January 2010 payments) of Proposition 42 to cities and counties until May 2010. These deferrals total \$288 million dollars, \$144 million of which is a direct hit to counties. CSAC reports that in spite of the Proposition 42 deferral, cities and counties are still scheduled to receive their third and fourth quarterly payments (April and July 2010). (Note: these deferrals are not considered as loans, thus the Proposition 1A protections for Proposition 42 funds are not triggered and the State will not pay back the funds with interest.)

The remaining \$700 million in Proposition 1B Local Streets and Roads (LSR) monies were appropriated in the 2009-10 budget revisions. The budget trailer bill provides cities and counties the ability to backfill the Proposition 42 deferrals with LSR funds during the period of the deferral as long as Proposition 1B is made whole upon repayment by the State.

The budget trailer bill package, however, did not provide this same authority for cities and counties to backfill the HUTA deferrals with LSR funds. Furthermore, trailer bill language added a number of new requirements in order for counties to access the 2009-10 Proposition 1B appropriation. A city, county, or city and county must meet the following requirements:

- Shall have received its full allocation for 2007-08.
- Shall have submitted annual reporting information to the State for 2007-08.

- Shall agree that 2009-10 funds received will be used for projects that are not currently fully funded with a dedicated funding source or sources.
- Shall agree to encumber the funds before July 1, 2010.
- Shall report to the Department of Finance the total balance of unencumbered funds in the road fund.
- Shall certify that the total balance of unobligated or unencumbered funds in the road fund is no more than the sum balance of three months of anticipated apportionments from the Highway Users Tax Account in the Transportation Tax Fund and from the Transportation Investment Fund.
- Any of the funds that are not allocated by July 1, 2010, shall revert to the Local Streets and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006 to be appropriated in future years.

Other Transportation Issues

- High-Speed Rail

The budget package approves \$139.1 million in Proposition 1A (2008) high-speed rail bonds funds for the FY 2009-2010.

- Streamlining of Project Initiation Documents (PID)

The approved budget revision bill directs Caltrans, by October 1, 2009, to convene a working group, to develop strategies for sharing and lowering costs, streamlining procedures, and reducing delays associated with development of PIDs resulting in a report is due to the Joint Legislative Budget Committee by March 1, 2010.

Furthermore, the proposed budget allocates \$36.5 million to Caltrans to continue work associated with the development of PIDs for the remainder of the fiscal year. The initial working group discussions are expected to begin next month.

Major projects on the state highway system require a PID before the California Transportation Commission (CTC) can recommend a project to be programmed for funding. The information contained in a PID includes such things as the scope, scheduling, and costs associated with a project. Under current processes, local transportation agencies can create the PID, with oversight work completed by Caltrans, or a local agency can also authorize Caltrans to complete the PID. Currently, costs incurred by Caltrans for work related to the development or oversight of a PID is to be paid through Caltrans resources.

SANBAG's state advocate, Mark Watts, worked closely with Self-Help Counties Coalition to minimize, if not eliminate, potential increased costs to SANBAG due to legislative proposals to shift the cost of PID's to local jurisdictions.

During Administrative Committee, Mayor Pat Morris and Supervisor Paul Biane discussed concerns about the State taking Redevelopment Assistance (RDA) funds and the California Redevelopment Association's efforts to challenge the State's action. Supervisor Brad Mitzelfelt thanked everyone for their advocacy efforts to project local funding.

Financial Impact: This item is consistent with the current budget for task number 50310000 and does not impact SANBAG's budget at this time.

Reviewed By: This item was reviewed by the Administrative Committee on August 12, 2009.

Responsible Staff: Jennifer Franco, Director of Intergovernmental and Legislative Affairs

Attachment #1

Bill #	Description
	4th Extraordinary Session
SB 1/AB 1	Changes to 2009-10 Budget
SB 2/AB 2	Education / Higher Education
SB 3/AB 3	Education: 2008-09 Reversion, Certification
SB 4/AB 4	Human Services
SB 5/AB 5	Health
SB 6/AB 6	Medi-Cal Managed Care
SB 7/AB 7	Centralized Eligibility
SB 8/AB 8	CalWORKs Policy, IHSS Fraud, COLA Changes
SB 9/AB 9	Developmental Disabilities
SB 10/AB 10	Transportation
SB 11/AB 11	Resources
SB 12/AB 12	General Government
SB 13/AB 13	Public Safety / Judicial
SB 14/AB 14	Prop 1A / RDAs
SB 15/AB 15	Prop 1A Payback
SB 16/AB 16	Cash Deferrals
SB 17/AB 17	Revenues #1
SB 18/AB 18	Revenues #2
SB 20/AB 20	Boards Consolidations and Eliminations
SB 21/AB 21	Procurement
SB 22/AB 22	Asset Management
SB 23/AB 23	Tranquillon Ridge
SB 25/AB 25	Cash Management
SB 26/AB 26	RDA Shift
SB 27/AB 27	RDA Securitization
SB 30/AB 30	HUTA
	Regular Session
SB 63/AB 181	Integrated Waste Management Board
SB 90	Supplemental Appropriations

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
-

Minute Action

AGENDA ITEM: 7

Date: September 2, 2009

Subject: Federal Update on Fiscal Year 2010 Transportation Appropriations and Surface Transportation Reauthorization

Recommendation:* Receive report and provide direction to further SANBAG's federal advocacy efforts, if desired.

Background: During the month of July, SANBAG continued to advocate for projects adopted as part of its advocacy strategy for the Fiscal Year (FY) 2010 Housing, Transportation and Urban Development (THUD) Appropriations bill and for the potential surface transportation reauthorization bill. SANBAG also advocated Congress to develop a solution to resolve the shortfall in the Highway Trust Fund (HTF) and for Congress to continue the debate on Representative Jim Oberstar's (MN) draft surface transportation reauthorization bill. The purpose of this agenda item is to provide the Board with background information about these current advocacy efforts and to seek Board direction on furthering SANBAG's federal advocacy efforts, as needed.

FY 2010 THUD Appropriations Update

During the final weeks of July, the House approved their FY 2010 THUD Appropriations bill (H.R. 3288) by a roll call vote of 256-168. The legislation

Approved
Board of Directors

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

provided approximately \$76 billion for U.S. Department of Transportation (USDOT), including \$41.1 billion for highways and \$10.5 billion for mass transit, which also includes \$4 billion for the President's High Speed Rail Initiative (HSR). The bill provided a one percent spending increase for highways and a 3.3 percent spending increase for transit from FY 2009 funding levels.

For the SANBAG region, the projects listed in Attachment #1 were adopted by the House for inclusion in THUD Appropriations bill. Please note that the House action to support these projects does not equate to assurance that funding will be provided; funding is subject to approval by the Senate/House conference committee and subject to Presidential approval.

Following the House action, the Senate Appropriations THUD Subcommittee also marked-up the FY 2010 appropriations bill. For the SANBAG region, Senate mark-ups only included funding for Positive Train Control.

As the THUD Appropriations bill goes to Conference Committee, SANBAG staff recommends that we continue to advocate for projects adopted by the Board and provide our Congressional delegation with an updated status about our projects.

Surface Transportation Reauthorization and HTF Fix

Prior to the Congressional Recess, House Transportation and Infrastructure Committee (House T&I) Chairman Oberstar released draft legislation for a surface transportation reauthorization bill. The 775 page bill includes several placeholders for existing funding formulas, includes consolidating and/or terminating 75 of the 108 existing programs, and includes provisions to expand USDOT's bureaucracy as a means to help assure timely project deliverability. Overall, the bill represents a plan of action plan to revamp and revitalize the nation's mobility and access infrastructure by focusing on the following objectives and priorities:

- Nationwide highway and high-speed rail construction
- Public transit and freight improvements
- Workforce and sustainable technology development programs
- Rural mobility and access enhancement through increased Intermodalism and connectivity

- More efficient completion processes for programs and projects
- Performance target establishment and implementation
- Providing alternative, non-traditional funding sources like the National Metropolitan Infrastructure Bank

While it is not within the House T&I's jurisdiction to identify funding sources for the reauthorization bill (rather, the funding issue is within the jurisdiction of the House Ways and Means Committee for consideration), the bill does propose to establish new funding options that would alleviate some of the financial burden from the federal government: a National Metropolitan Infrastructure Bank, Public Private Partnerships, and a sustainable revenue source to rehabilitate the Highway Trust Fund (HTF).

Oberstar's reauthorization bill outlines a \$450 billion investment which will be distributed to states over a period of six years, representing a 38 percent increase from the current funding level (\$326 billion). The large price tag has caused many in the Obama administration and Congress to argue that the proposal is too ambitious for this fragile economic climate and therefore recommended an 18 month postponement. Forefront to concern about reauthorization is that the Obama administration currently estimates it will need \$20 billion in new savings or revenues to make HTF solvent until after the 2010 elections.

In the Senate, the Environment and Public Works Committee (EPW) worked on a mark-up of an 18-month extension of SAFETEA-LU with a \$20 billion transfer of funds from the General Fund to the Highway Trust Fund to continue funding for existing programs through March 2011.

During the month of July, Senators Dianne Feinstein and Barbara Boxer requested projects for inclusion in a funding bill. Working strategically, SANBAG submitted the following board approved reauthorization projects:

- I-15/I-215 Devore Interchange Improvement Project (Feinstein/Boxer)
- San Bernardino Rapid Bus Project (sbX) (Feinstein)
- Alameda Corridor East Grade Separations: Lenwood and Vista (Boxer)

Additionally, we worked in partnership with the City of San Bernardino, Los Angeles Metropolitan Transportation Authority, Omnitrans and the High Desert Corridor Joint Powers Authority to assist with project submittals.

The strategy implemented for these project submittals was based on the Senators' desire to receive only the highest prioritized projects for the region and to show regional support of projects submitted. In response, SANBAG advocated for the #1 priority in each project category from the SANBAG approved list of projects for reauthorization (Highway Corridors/Grade Separations, Public-Private Partnerships, and Transit).

At the time of their request, it was unclear if projects submittals were going to be under consideration for inclusion in the next transportation reauthorization bill or in a Safe Accountable Flexible Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) extension bill. Ultimately, the EPW passed a “clean extension,” meaning there were no earmarked projects included in the bill. Interestingly, during the debate for an 18-month extension, Senator Vitter (LA) proposed transferring unused stimulus funding to shore up the trust fund, which gained USDOT Secretary LaHood's attention.

To address the current HTF shortfall, House Appropriations Committee Chairman Dave Obey and Ways and Means Chairman Charlie Rangel introduced H.R. 3357, which among other things, transfers \$7 billion from the General Fund to the HTF. It also changed the Internal Revenue Code to allow future balances in the HTF to begin earning interest. The bill included no extension of spending programs beyond September 30, as House T&I Chairman Oberstar is committed to marking up his \$450 billion bill in September 2009. This legislation was passed on a vote of 363-68 in the House and 79-17 in the Senate. The Senate's vote on H.R. 3357 effectively postponed further consideration of the 18-month SAFETEA-LU extension bill, or its provisions, previously adopted by EPW.

Mobility 21 DC Advocacy Trip

Mobility 21 organized a staff-level D.C. advocacy trip July 20-22. SANBAG's Director of Intergovernmental and Legislative Affairs, Jennifer Franco, attended scheduled meetings along with staff from the Orange County Transportation Agency, Los Angeles Metropolitan Transportation Authority, Riverside County Transportation Commission, Southern California Association of Governments and the Los Angeles Chamber of Commerce. The purpose of the trip was to advocate for regional transportation funding needs.

At a meeting with Representative Roybal-Allard's office, staff indicated that they were disappointed that more support from other offices was not forthcoming for

Positive Train Control (PTC); Representative Roybal-Allard was the only Californian House member who requested funding for PTC.

At a meeting with Senator Feinstein's office, Legislative Assistant Matt Nelson expressed interest in the region's efforts to identify goods movement projects. During the meeting, we provided a copy of Multi-County Goods Movement Action Plan (MCGMAP) executive summary.

At a meeting with Senator Boxer's EPW staff members Kathy Dedrick and Susan Binder, we learned that EPW is currently working on drafting its own version of a surface transportation reauthorization bill; the intent of a separate legislative proposal is to have a competing, not a companion, proposal for Oberstar's draft reauthorization bill. At the close of the meeting, we were encouraged to work closely with EPW staff on potential language as they write their bill.

The Way Ahead

SANBAG's legislative program and advocacy strategy has provided direction to advocate for the issues highlighted within this agenda item. SANBAG's federal advocates continue to offer insights that would otherwise not be considered as they remain in constant communication with our Congressional delegation, other policy makers and with lobbyists working for Southern California transportation agencies. SANBAG staff will continue to provide updates as more information is available. Also, staff encourages the Board to provide further direction to advocate on behalf of SANBAG, as needed.

During SANBAG's August Administrative Committee, members present requested SANBAG to advocate for raising the Small Starts program (transit-related funding) funding ceiling in the reauthorization bill and to continue to work on advocating equally for all projects included in SANBAG's advocacy strategy. Board members also requested SANBAG to continue work with our Congressional delegation to support earmarks included in the FY 2009 THUD Appropriations bill for San Bernardino County.

Financial Impact: Item is consistent with the Fiscal Year 09/10 Budget. TN 50310000.

Reviewed By: This item was reviewed by the Administrative Committee on August 12, 2009.

Responsible Staff: Jennifer Franco, Director of Intergovernmental and Legislative Affairs

BRD0909B-JF.doc
Attachment:
BRD0909B1-JF.doc
50310000

TRANSPORTATION HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS BILL

FY 2010 Federal Appropriations Cycle

The federal appropriations process is just one opportunity to seek funds from the federal government and, typically, Congressional members would like the money to be expended during the year funds are allocated. The chart below provides information on projects located within San Bernardino County that were adopted by the House for inclusion in the Transportation Housing and Urban Development Appropriations bill:

SANBAG Submitted Projects

I-15/Devore Interchange Improvements, San Bernardino County, CA (Dreier) \$1,500,000

I-15/Base Line Road Interchange Improvements, Rancho Cucamonga, CA (Dreier) \$750,000

- Needles Highway, Needles, CA (Lewis) \$1,000,000

- Ranchero Road (Lewis), Hesperia, CA \$1,000,000

- Cherry Avenue/I-10 Interchange, County of San Bernardino, CA (Baca) \$750,000

- San Bernardino, E Street Corridor sbX Bus Rapid Transit (BRT) Project,* San Bernardino, CA (Baca, Miller) \$32,370,000 // Senate Mark-up was for \$20,000,000

41

Note: sbX is a Small Start project. Under law, the maximum share of federal appropriations for a Small Starts is \$75 million. Any funding appropriated by Congress for the sbX, including this \$32.3 million, is a part of that \$75 million cap.

- Positive Train Control:

The House Transportation Appropriations bill provided additional funds for the Federal Railroad Administration's research and development account that can be used to fund PTC systems. The Senate Transportation Appropriations Committee provided the first installment of \$50 million for FY 2010 as part of a total of \$250 million authorized in the Rail Safety Improvement Act of 2008.

San Bernardino County Delegation Projects

- I-215/University Parkway Interchange in San Bernardino, San Bernardino County, CA (Lewis) \$750,000

- Yucca Loma Bridge/Interstate 15 Congestion Relief Project, CA \$750,000

- I-10 at Grove Avenue and Fourth Street Interchange and Grove Avenue Corridor Project, City of Ontario, CA (Baca) \$950,000

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 8

Date: September 2, 2009

Subject: SANBAG's State Advocacy Services

Recommendation:* Approve Contract No. 09-223 with Smith, Watts & Company, LLC to provide State advocacy services in an amount not to exceed \$175,418.

Background: In July, the SANBAG Board approved SANBAG's Request for Proposals 09-223 to seek State advocacy services. The contract for SANBAG's current State advocate will expire on September 30, 2009. The purpose of this agenda item is to recommend Smith, Watts and Company, LLC be awarded a contract to serve as SANBAG's State advocate for a contract term of October 1, 2009 through September 30, 2012, with one two-year extension.

The recommended contract is provided as Attachment No. 1 to this agenda item, which includes a base annual retainer of \$55,080, with an option to adjust not to exceed two percent (2%) on an annual basis for inflation, and \$2,000 annual maximum expenses. The total maximum contract cost through September 2012 is \$175,418.00.

Upon board approval in July, RFP 09-223 was posted on SANBAG's website and was mailed to known transportation advocacy firms in Sacramento. In response to the RFP, SANBAG received three proposals and established a review panel to review the proposals and conduct interviews.

*Approved
Board of Directors*

Date: _____

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

The RFP 09-223 review committee was composed of government affairs staff from Riverside County Transportation Commission, Los Angeles Metropolitan Transportation Authority, the SANBAG Executive Director, SANBAG Director of Intergovernmental and Legislative Affairs and the SANBAG Director of Freeway Construction.

Each of the submitting firms was interviewed and is listed below:

- Capital Representation Group (interviewed: Tim Egan)
- Smith, Watts and Company, LLC (interviewed: Mark Watts)
- TMG Strategic Communications, Inc. (interviewed: Kristine Scott, Michael McKinney and Adam Eventov)

The results from the RFP process concluded that Smith, Watts and Company, LLC is best qualified to meet SANBAG's needs and is well positioned to assist SANBAG further its relationships in Sacramento.

During SANBAG's Administrative Committee, Board members unanimously adopted the Staff recommendation to award this contract to Smith, Watts, and Company.

Financial Impact: This item is consistent with the adopted SANBAG Fiscal Year 2009-2010 Budget Task No. 50310000.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Administrative Committee on August 12, 2009. Legal review provided by Robert Messinger, Deputy County Counsel, San Bernardino County.

Responsible Staff: Jennifer Franco, Director Intergovernmental and Legislative Affairs

SANBAG Contract No. 09-223

by and between

San Bernardino Associated Governments

and

Smith, Watts & Company, LLC

for

State Advocacy Services**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # <u>09-223</u>	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>SWC</u>	<input type="checkbox"/> Yes ____ % <input type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>175,418</u>	Previous Amendments Total: \$ ____
Contingency Amount: \$ ____	Previous Amendments Contingency Total: \$ ____
	Current Amendment: \$ ____
	Current Amendment Contingency: \$ ____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ 175,418

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
0503	52001	MSI Valley Major	99006	\$ <u>157,418</u>
0503	52001	Mt./Dessert Admin	99002	\$ <u>18,000</u>
_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	\$ ____

Original Board Approved Contract Date: 9/2/09 Contract Start: 10/1/09 Contract End: 9/30/12
New Amend. Approval (Board) Date: _____ Amend. Start: _____ Amend. End: _____

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>09/10</u> \$ <u>42,810</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>132,608</u>
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Is this consistent with the adopted budget? ☒ Yes ☐ No
If yes, which Task includes budget authority? 50310000
If no, has the budget amendment been submitted? ☐ Yes ☐ No

CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☐ Intergovernmental ☒ Private ☐ Non-Local ☐ Local ☐ Partly Local
Disadvantaged Business Enterprise: ☐ No ☐ Yes ____ %

Task Manager: **Jennfier Franco**Contract Manager: **Jennifer Franco**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

Filename: C09-223-JF

Contract No. C09-223
For State Advocacy Services for SANBAG
between
San Bernardino Associated Governments
and
Smith, Watts & Company, LLC.

Agreement

THIS AGREEMENT is made this 2nd day of September, 2009 (this "Agreement"), by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS hereinafter referred to as "SANBAG," and Smith, Watts & Company, LLC., hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, SANBAG wishes to engage CONTRACTOR to provide State Advocacy services for SANBAG,

WHEREAS, CONTRACTOR has the qualifications and expertise to provide such services;

NOW, THEREFORE the parties hereto do mutually agree to the following terms and conditions:

- I. CONTRACTOR shall provide State Advocacy services for SANBAG as set forth in Attachment 3 Scope of Services which is attached hereto and incorporated herein by reference.
- II. CONTRACTOR shall receive overall supervision regarding interests in this contract from the SANBAG Executive Director and the SANBAG Intergovernmental and Legislative Affairs Director.
- III. CONTRACTOR shall perform the foregoing services in full compliance with applicable law, rules, and regulations, and shall, in cooperation with SANBAG file all reports required by law in a timely manner in connection with any representation work for SANBAG. CONTRACTOR shall furnish all necessary information and assist SANBAG in filing any reports required of them by law relating to services under this contract in a timely manner.
- IV. The parties recognize that CONTRACTOR has other clients for which it may perform services similar to those provided for herein, and may find from time to time that the interests of various such clients may conflict with the interests of SANBAG. CONTRACTOR shall advise SANBAG of all such instances wherein there is a

C09-223 State Advocacy Services

conflict between the interests of SANBAG and the interests of one or more of its other clients, and in each and every such instance agrees that it shall not take any action on behalf of SANBAG or such other client or clients without the consent of SANBAG as applicable. CONTRACTOR further agrees that in the event of any conflict in the interests or positions of SANBAG that CONTRACTOR shall discuss such with the Executive Directors of such agencies and abide by their direction with regard to such matter and if they cannot agree on how to proceed, then CONTRACTOR shall not remain involved in such matter.

- V. CONTRACTOR agrees that it will not disclose any confidential information regarding SANBAG or its current or former employees that it has obtained or will obtain, either directly or indirectly, without the prior consent of SANBAG as applicable.
- VI. SANBAG shall pay CONTRACTOR the sum of \$4,590 per month (the "Monthly Compensation") commencing on October 1, 2009, plus chargeable expenses not to exceed \$2,000 annually. The Monthly Compensation will be adjusted annually by the increase in the Consumer Price Index, All Items, Not Seasonally Adjusted, Los Angeles-Riverside-Orange County, California ("CPI") as published by the U.S. Department of Labor, Bureau of Labor and Statistics, for the 12 month period ending each June 30, or two percent (2%) whichever is less. All legislative advocacy work is to be performed by Mark Watts or others as may be approved by SANBAG. Chargeable expenses for the purpose of this agreement shall include reasonable and necessary expenses directly related to the interests of SANBAG and travel outside the Sacramento area, including meals and lodging while engaged in such travel. All chargeable expenses related to this contract shall be expressly authorized by SANBAG prior to such expenses being incurred, and shall not include ordinary office overhead. It is agreed that the aforesaid compensation shall cover all services for SANBAG and that CONTRACTOR shall only receive payment from SANBAG for its services.
- VII. CONTRACTOR shall submit a detailed monthly statement of billing and approved expenses to SANBAG. SANBAG shall pay monthly billings within twenty (20) days of receipt from CONTRACTOR.
- VIII. The term of this Agreement shall commence on October 1, 2009, and continue through September 30, 2012, unless earlier terminated by either party for convenience upon sixty (60) days written notice to the other party. Upon such termination, CONTRACTOR shall be compensated for services and approved expenses to the effective date of the termination. SANBAG shall also have the right to terminate this Agreement for cause immediately upon written notice to CONTRACTOR for failure to perform its obligations under this Agreement. Upon its termination for cause, CONTRACTOR shall be paid for services and expenses to the date of termination. No damages of any nature shall be due CONTRACTOR as a result of SANBAG's exercise of its termination rights under this Agreement. SANBAG in its sole discretion may extend the term of this Agreement on the same provisions and conditions for one additional two (2) year term following the expiration of the initial term, provided that at the time of the applicable extension, CONTRACTOR is not in

C09-223 State Advocacy Services

default with respect to any of the terms, covenants or conditions to be observed or performed by CONTRACTOR hereunder. If SANBAG desires such an extension, it shall give CONTRACTOR written notice at least sixty (60) days, but not more than ninety (90) days prior to the expiration of the preceding term.

- IX. SANBAG retains CONTRACTOR on an independent contractor basis and CONTRACTOR is not an employee or agent of SANBAG. Personnel performing services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR'S exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services and as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.
- X. All services to be furnished under this Agreement shall be deemed professional services. As such, CONTRACTOR shall have neither the right nor power to assign, sublet, transfer or otherwise substitute its interest in or obligations under this Agreement without the prior written consent of SANBAG.
- XI. The subcontracting of any of the services by the CONTRACTOR must be accomplished by a written instrument approved by SANBAG. Such instrument shall contain an express assumption by the subcontractor of all conditions, terms and covenants contained in this Agreement.
- XII. All data prepared by CONTRACTOR under this Agreement, such as plans, drawings, tracing, quantities, specifications, proposals, sketches, magnetic media, computer software or other programming, diagrams and calculations relative to this agreement shall become the property of SANBAG upon the completion of the term of this agreement, except that CONTRACTOR shall have the right to retain copies of all such data for its records. SANBAG shall not be limited in any way in their use of such data at any time, provided that any such use not within the purposes intended by this agreement shall be at SANBAG's sole risk and provided that CONTRACTOR shall be indemnified against any damages resulting from such use, including the release of this material to third parties for a use not intended by the agreement. Should CONTRACTOR, following termination of the Agreement, desire to use any materials prepared in connection with this project, it shall first obtain the written approval of SANBAG representative as applicable.
- XIII. All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, written information, and other materials described in section XII. submitted to CONTRACTOR in connection with the performance of this Agreement shall be held confidential by CONTRACTOR. Such materials shall not, without the prior written consent of SANBAG as applicable, be used by CONTRACTOR for any purposes other than the performance of the services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services or

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the project. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or becomes known, to the related industry shall be deemed confidential. CONTRACTOR shall not use SANBAG's insignia, photographs of the project, or any publicity pertaining to the services or the project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SANBAG, as applicable.

- XIV. Except as necessary for the performance of the services, no copies, sketches or graphs of materials, including graphic art work, which are prepared pursuant to this Agreement, shall be released by CONTRACTOR to any other person or agency without prior written approval of SANBAG as applicable. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by SANBAG, unless otherwise provided by written agreement between the parties.
- XV. The CONTRACTOR agrees to defend, indemnify and hold harmless SANBAG, their officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with the services provided hereunder due to negligent acts, errors or omissions or willful misconduct of the CONTRACTOR. The CONTRACTOR will reimburse SANBAG for any expenditures, including reasonable attorneys' fees, incurred by them in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of CONTRACTOR.
- XVI. CONTRACTOR shall be responsible for the professional quality, technical accuracy and the coordination of the services. SANBAG's review or acceptance of, or payment for any work product prepared by CONTRACTOR under this Agreement shall not be construed to operate as a waiver of any rights SANBAG may have under this Agreement or of any cause of action arising out of CONTRACTOR'S performance of this agreement. Further, CONTRACTOR shall be and remain liable to SANBAG in accordance with applicable law, for all damages to them caused by CONTRACTOR'S negligent performance of any of the services.
- XVII. CONTRACTOR shall obtain, and shall require its subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to SANBAG.
 - A. CONTRACTOR shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance shall:
 - 1. Name SANBAG, their officials, officers, employees, agents, and consultants as insureds with respect to performance of services and shall contain no special limitations on the scope of coverage or the protection afforded to these insureds;

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2. Be primary with respect to any insurance or self insurance programs covering SANBAG, its officials, officers, employees, agents, and consultants; and
 3. Contain standard separation of insureds provisions.
- B. CONTRACTOR shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- C. CONTRACTOR shall maintain errors and omissions liability insurance with a limit of not less than \$1,000,000 and shall maintain such for a minimum of one year following completion of services.
- D. CONTRACTOR shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 for each accident.
- E. CONTRACTOR shall furnish SANBAG with properly executed certificates of insurance and, if requested by SANBAG, certified copies of endorsements and policies, which clearly evidence all insurance required under this agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage, except on 30 days' prior written notice to SANBAG. SANBAG shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.
- F. CONTRACTOR shall replace certificates, policies and endorsements for any insurance expiring prior to completion of services under this Agreement. Further, CONTRACTOR shall maintain such insurance from the time services commence until services are completed, except as otherwise provided by this Agreement.
- G. CONTRACTOR shall place such insurance with insurers having A.M. Best Company ratings of no less than A:VIII and licensed to do business in California, unless otherwise approved, in writing, by SANBAG's representative.
- XVIII. CONTRACTOR warrants and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, SANBAG shall have the right to rescind this Agreement without liability.

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- XIX. For the term of this Agreement, no member, officer or employee of SANBAG, during the term of his or her service with these agencies, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- XX. CONTRACTOR shall make available for examination by SANBAG, their authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged pursuant to this Agreement. Further, CONTRACTOR shall furnish to SANBAG, their agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by CONTRACTOR. All such information shall be retained by CONTRACTOR for at least three years following termination of the Agreement, and SANBAG shall have access to such information during the three-year period for the purposes of examination or audit.
- XXI. CONTRACTOR represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
- XXII. SANBAG reserves the right to employ other contractors for Legislative Advocacy services.
- XXIII. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.
- XXIV. Time is of the essence for each and every provision of this Agreement. This Agreement shall be governed by and construed by the laws of the State of California.
- XXV. All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

Smith, Watts & Company, LLC.
1111 L Street
Sacramento, CA 95814

SANBAG
1170 W. 3rd St., 2nd Floor
San Bernardino, CA 92410

ATTN: Mark Watts, Partner

ATTN: Deborah Barmack, Executive Director

Any notice so given shall be considered served on the other party three days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and

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addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

- XXVI. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the parties and the interpretation of the parties' understanding concerning the performance of the services.
- XXVII. In the event that the parties determine that the Scope of Services or other provisions of this Agreement must be altered, the parties may execute a contract amendment to add or delete work within the Scope of Work or amend any other provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.
- XXVIII. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof and supersedes any previous Agreements or understandings.
- XXIX. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.


Mark Watts, Partner
Smith, Watts & Company, LLC.
1111 L Street
Sacramento, CA 95814

Dated: _____

Paul M. Eaton, SANBAG President
San Bernardino Associated Governments
1170 W. 3rd St., 2nd Fl.
San Bernardino, CA 92410

Dated: _____

APPROVED AS TO FORM:



Jean-Rene Basle, SANBAG Counsel

Dated: 8-12-09

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
-

Minute Action

AGENDA ITEM: 9

Date: September 2, 2009

Subject: Request for Qualifications (RFQ) Contract C10027 for On-Call Right of Way Services

Recommendation: * Authorize staff to release Request for Qualifications (RFQ) C10027 for On-Call Right of Way Services including Acquisition, Appraisal, Right of Way Engineering, Surveying, and other Specialty Professional Services.

Background: This action will lead to the award of a new consultant contract for right of way related services. To supplement the SANBAG team and assist in expediting the right of way acquisition work for upcoming construction projects, it is necessary to secure a full service team of professionals available on an on-call basis to provide right of way services including acquisition, appraisal, right of way engineering, surveying, mapping, and related specialty services. This on-call contract will allow SANBAG the flexibility to supplement its current forces consisting of CALTRANS and County of San Bernardino Real Estate Services Department to assist in ensuring that projects meet schedule. This on-call contract will provide SANBAG additional options to most effectively complete the right of way acquisition work required for each project, hence, enhancing project delivery success.

Financial Impact: This item is consistent with the FY 2009/2010 budget.

*

Approved
Board of Directors

Date: September 2, 2009

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on August 13, 2009. SANBAG Counsel has reviewed and approved the draft contract as to form.

Responsible Staff: Garry Cohoe, Director of Freeway Construction

ATTACHMENT “A”

Scope of Services

To provide

**ON-CALL RIGHT OF WAY ACQUISITION SERVICES
INCLUDING APPRAISALS, RIGHT OF WAY ENGINEERING,
SURVEYING, AND OTHER SPECIALTY PROFESSIONAL SERVICES**

For

Various Projects in San Bernardino County

Contract Number: C10027

SCOPE OF WORK

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for CONSULTANT to provide **ON-CALL RIGHT OF WAY ACQUISITION SERVICES INCLUDING APPRAISALS, RIGHT OF WAY ENGINEERING, SURVEYING, AND OTHER SPECIALTY PROFESSIONAL SERVICES** for a period of three (3) years with two one-year options for extension, to be exercised at the sole discretion of SANBAG, on an On-Call/as needed basis in support of current and future SANBAG Projects.

Such services may include, but are not limited to, the following work program:

A. PROJECT MANAGEMENT

This task covers typical project management services including the requirements for meetings, schedules, progress reports, and administration of the CONSULTANT work. Depending on the specific project assignment, SANBAG may require additional Project Management services to be performed by CONSULTANT but typical services anticipated at this time include, but are not limited to the following:

1. Coordination/Administration

1.1 Coordination and Meetings

CONSULTANT shall meet with the relevant parties to discuss issues pertinent to the project assignments. The CONSULTANT team shall participate in project meetings (i.e. Project Development Team (PDT) meetings, Agency coordination meetings, workshops) and be prepared to discuss project status, issues, policy, or procedural issues. The team shall bring progress plans as appropriate and assist in developing meeting notices, agenda, minutes and/or handouts as needed.

1.2 Administration

Administration shall include the following elements of the work:

- Supervise, coordinate, and monitor work for conformance with the appropriate standards and policies;
- Apply for and/or assist to obtain City approvals and permits as required;
- Prepare, circulate, and file correspondence and memoranda as appropriate;

- Maintain project files using the CALTRANS Uniform File System, unless otherwise directed by SANBAG.

2. Schedule and Progress Reports

The CONSULTANT team shall submit an initial Project Schedule for each task order assignment. As directed by SANBAG, the schedule shall be tailored for project specific activities as appropriate to track right of way acquisition and project clearance activities from the initial appraisal phase through property possession. Following approval by SANBAG, this schedule will become the Baseline Project Schedule and will be tracked throughout the duration of the project.

As directed by SANBAG, schedule updates will be part of a monthly Progress Report prepared by CONSULTANT that describes the project status, outstanding action items, and/or issues for SANBAG approval. If appropriate and requested by SANBAG, the schedule and/or Progress Report may require updating more frequently.

3. Quality Assurance/Quality Control (QA/QC) Plan

The CONSULTANT team shall maintain a Quality Assurance/Quality Control Plan throughout performance of the services for this contract. The QA/QC Plan is intended to ensure that the appraisals, maps, reports, plans, studies, estimates, and other documents submitted under this Scope of Services are complete, accurate, checked, and proofread to meet professional standard practices in effect at the time of execution of the Contract.

Upon receipt of the Notice to Proceed, CONSULTANT shall discuss and explain their plan to provide a reasonable quality control check system and quality assurance program for the contract services described herein follow the applicable standard practices in effect that the time of execution of the Contract. Within twenty (20) days of receiving the Notice to Proceed, CONSULTANT shall submit a draft copy of the QA/QC Plan for review and approval by SANBAG. If requested by SANBAG, CONSULTANT shall modify and/or revise the QA/QC Plan as needed to appropriately control the project quality program for the contract.

B. RIGHT OF WAY ENGINEERING AND SURVEYING SERVICES

Such services may include, but are not limited to, the following work program:

1. Consultants shall provide right of way engineering and field surveying services including, but not limited to: preparing Boundary Maps, Monumentation Maps, Survey control maps, Records of Survey, Lot Line Adjustments, Subdivision maps, Parcel Maps, Appraisal maps, utility potholing information maps, Legal Descriptions & Plats, Certificates of Compliance, as described in the California Government Code under section 66499.35, and other right of way engineering services as directed by SANBAG.
2. Consultants shall prepare Boundary, Monumentation and Survey Control maps showing all parcels and easement boundaries and their relationship to the land net monuments used to define them. In cases where SANBAG is working in conjunction with the California Department of Transportation (Caltrans), these maps shall conform to the State's manuals as follows: PLANS PREPARATION MANUAL, the RIGHT OF WAY MANUAL, SURVEYS MANUAL and the DRAFTING MANUAL in regard to content and appearance of said right of way engineering and field surveying products.
3. Consultants shall utilize appropriate land surveying and land title practices to:
 - Establish all property and easement boundaries within and overlapping the project area.
 - Perform site reconnaissance and monument recovery.
 - Establish or reestablish all monumentation required by State law and local regulations.
 - File a Record of Survey, or Corner Recorder as necessary, to comply with the Land Surveyors Act.
 - The preparation, filing and associated fees will be the responsibility of Consultants.

All data, maps and documents produced by Consultants shall be subject to approval and acceptance by SANBAG's Project Manager. In the event of non-acceptance due to errors or omissions, Consultants shall have seven calendar days to make corrections and return maps and documents to SANBAG. Final acceptance will occur only after the work product has been determined to conform to this documents scope of work and requirements.

4. All surveying and mapping work affecting the State of California Right of Way at any location, or along any route, shall be in accordance with State law and local regulation and the procedures and instructions contained in the Caltrans Right of Way Manual and the Caltrans Surveys Manual (Manual). Additionally, all such work shall be in accordance with the procedures and instructions contained in the Caltrans district 8 Right of Way engineering Requirements for the Preparation Documents and Maps (Requirements). In the event of conflict, the Requirements shall be controlling. All Right of Way acquisitions by SANBAG with the intent to ultimately convey such acquisitions to the State, are considered State right of way acquisitions.
5. Consultants shall appoint a Survey Manager who is a Licensed Land Surveyor or Licensed Civil Engineer, authorized to practice land surveying by the State of California. The Survey Manager will be responsible for all work to be performed by Consultants for SANBAG.
6. Deliverables shall consist of three (3) originals to including special reports performed by agencies other than Consultant. All electronic files shall be provided on Compact Disc, "CD-R", or DVD, "DVD-R" formatted for the Microsoft Windows operating system. Any required electronic mapping, Base map, (Hardcopy), Monumentation map, Appraisal maps, etc. shall be in a format consistent with Microstation File (.DGN). Electronic documents shall be in ASCII text; Microsoft Word 2000 or 2003. Completed Record of Survey, (filed with the County Recorder) shall be formatted at full size for Adobe Acrobat professional (.PDF). A Mylar copy shall also be provided. All survey field notes shall also be in an Adobe Acrobat professional format.
7. If any legal issues exist during the course of an assignment, Consultant shall coordinate and request legal opinion. All legal opinions shall be rendered by SANBAG's legal counsel.
8. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.

C. RIGHT OF WAY ACQUISITION AND RELOCATION, REAL PROPERTY SEARCHES, IDENTIFICATION AND FEASIBILITY STUDIES FOR REPLACEMENT AND MITIGATION SITES, COST ESTIMATES and UTILITIES RELOCATION SERVICES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide Right of Way Acquisition and Relocation, Real Property Searches, Identification and Feasibility Studies for Replacement and Mitigation Sites, Cost Estimates, and Utilities Relocation services in conjunction with current and future SANBAG Projects.

Consultant services may include, but are not limited to, the following work program:

1. All Consultant work shall comply with applicable Federal, State and local statutes and regulations, including but not limited to, the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the California Government Code; the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.); the California Code of Civil Procedure; the Uniform Standards for Federal Land Acquisition Act; the California Public Utilities Code; and the California Streets and Highways Code.
2. Consultant deliverables shall typically consist of three (3) originals, together with specialist's reports which may be performed by someone other than Consultant.
3. Consultant may be required to meet and coordinate their efforts with SANBAG staff, SANBAG legal counsel, and other consultants or Caltrans staff; participate in office or project meetings.
4. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.

5. Consultant may be required to take direction from SANBAG's legal counsel in the delivery of services, and to provide testimony in any Administrative or Judicial proceeding related to services rendered by Consultant to SANBAG.
6. If any legal issues exist during the course of Consultant's performance of services required by SANBAG, Consultant shall request legal opinion. All legal opinions shall be rendered by SANBAG's legal counsel.
7. Consultant may be required to review right of way acquisition and relocation files of current and past SANBAG projects to ensure compliance with applicable state and/or federal regulations.
8. Consultant's Acquisition/Negotiation Agents must provide evidence of proper real estate license in the State of California.
9. Consultant must demonstrate knowledge and experience in working with the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the California Department of Transportation (Caltrans), railroad entities and major utility owners.
10. Consultant shall provide a Project Manager, an Acquisition/Negotiation Manager, a Relocation Assistance Manager, and a Utilities Relocation Coordinator who may not be replaced without the written consent of SANBAG.

D. RIGHT OF WAY APPRAISAL SERVICES FOR RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND AGRICULTURAL PROPERTIES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide right of way appraisal services for developed or undeveloped residential, commercial, industrial and agricultural properties. CONSULTANT may be required to produce appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties.

Such appraisal services may include, but are not limited to, the following work program:

1. Consultant shall prepare appraisals in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part

24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.), the California Code of Civil Procedure, the Uniform Standards of Professional Appraisal Practice (USPAP), and in some cases, the Uniform Appraisal Standards for Federal Land Acquisition Act. Consultant must be licensed by the State of California.

2. Consultant must be qualified to provide expert witness testimony and defend the conclusions reached in the appraisal at any Administrative or Judicial proceeding.
3. Deliverables shall typically consist of three (3) originals of the completed appraisal report, specialty reports and component valuations which may be performed by someone other than Consultant, and incorporated into the overall fair market valuation.
4. Consultant may be required to meet with and coordinate their efforts with SANBAG staff, SANBAG legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.
5. Appraisal reports may be reviewed for acceptance and independent approval by the review appraisers. Revisions may be required by reason of this review process. Consultants may be requested to complete and deliver revised and/or updated appraisals. In the event of non-acceptance due to errors or omissions, Consultant shall have fifteen (15) calendar days to make corrections and return the revised appraisals to the review appraiser.
6. For proposed acquisitions, the owner of the real property or a designated representative will be invited by the Appraiser to accompany the Appraiser during the inspection of the property. This invitation must be in the form of a letter entitled "Notice to Appraise" written by the Appraiser to the owner. A copy of the invitation will be included in the appraisal report.
7. It is the Appraiser's responsibility to contact SANBAG's project engineers for discussion and/or clarification of any project design matters. This is critical in the appraisal of partial acquisitions and easements where the Appraiser may need cross sections or other project engineering data to complete the report.
8. The highest and best use for the property in the before condition must be determined and supported. If a partial acquisition is involved, the highest and best use of the property in

the after condition must be determined and supported. If the existing use is not the premise on which the valuation is based, the appraisal will contain an explanation justifying the determination that the property is available and adaptable for a different highest and best use and there is demand for that use in the market.

9. Where the acquisition involves only a part (or portion) of the property, the Appraiser will estimate any severance damages and special benefits to the remainder, including reasoning and market data to support the conclusion. The Appraiser will indicate if the remainder constitutes an economic or uneconomic unit in the market and/or to the present owner.
10. The California Eminent Domain Law will be followed in partial acquisitions. Special benefits are to be offset only against damages to the remainder in accordance with the law.
11. Appraisal for easement acquisitions will reflect the restrictive elements of the easement to be acquired and the potential effect of such elements on the utility of the property considering its highest and best use. Full details with respect to any interference with the highest and best use of the property affected must be explained and supported.
12. The Appraiser must estimate and support the economic rent, state the contract rent and the remaining term of the lease as of the date of value. Include lessor and lessee responsibilities for paying major expenses, e.g. taxes, insurance and maintenance.
13. Appraiser shall itemize in detail the "improvements pertaining to realty" (Eminent Domain Law-CCP Section 1263.205) showing their replacement cost new, depreciated value in place, salvage value if any, and relocation estimate. To the extent possible, determine the ownership claims of the Improvements Pertaining to the Realty.
14. In cases where the Appraisal Assignment requires a Specialty Appraisal (Furniture, Fixtures, Machinery and Equipment) and/or Specialists Reports (title, survey, soils, and engineering), Appraiser may be required to coordinate with SANBAG staff and/or consultants for such services as directed by SANBAG. Fees charged by SANBAG staff and/or consultants for Specialty Appraisal and/or Specialists Reports shall be paid directly by SANBAG.
15. It is the Appraiser's responsibility to thoroughly review the Specialty Appraisal for adoption (with adjustments or not, as appropriate) and inclusion in the overall appraisal.

The estimated values that the specialty items actually contribute to the overall value of the real estate will be separately stated but included in the total value of the property.

16. If any legal issues exist during the course of the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by SANBAG's legal counsel.
17. It is the Appraiser's responsibility to contact SANBAG's legal counsel for discussion and/or clarification in identifying personal or real property.
18. If hazardous waste is discovered on the property, Appraiser shall seek further direction from SANBAG.
19. Additional Qualifications:
 - a. Consultant shall have a minimum five years experience as full time appraiser
 - b. Consultant shall be a member of a professionally recognized appraisal society or institute, such as the Appraisal Institute.
 - c. Consultant shall have completed a minimum ten appraisal assignments in California involving potential acquisition pursuant to the laws of eminent domain.
 - d. Consultant shall certify that Consultant has not been disciplined in the last five years as an appraiser by any government or professional association.

E. APPRAISAL REVIEW SERVICES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide independent appraisal review services for developed or undeveloped residential, commercial, industrial and agricultural properties. Review appraisal shall be completed by a unique, independent appraisal company. CONSULTANT may be required to produce review appraisal reports for full or partial acquisitions, easements, temporary construction easements, leased or licensed properties, and sale or disposition of excess/surplus properties.

Such review appraisal services may include, but are not limited to, the following work programs:

1. When required by SANBAG, Review Appraiser shall examine appraisals prepared by the Residential, Commercial, Industrial, Agricultural and/or Furniture, Fixtures, Machinery and Equipment appraisers.

2. Review Appraiser shall provide Review Appraisal Services based on nationally recognized appraisal standards and techniques, including those established by the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition; ensure compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code, the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations CH 6, Art 1, Section 6000 et seq.), and the California Code of Civil Procedure. Comply with the requirements of the Caltrans Right of Way Manual, when applicable. Appraiser must be licensed by the State of California.
3. Review Appraiser must be qualified to provide expert witness testimony and defend the conclusions at any Administrative or Judicial proceeding.
4. Review Appraiser may be required to meet with and coordinate their efforts with SANBAG staff, SANBAG legal counsel, and other consultants or Caltrans staff; participate in office or project site meetings.
5. It is the Review Appraiser's responsibility to contact SANBAG's project engineers for discussion and/or clarification of any project design matters. This is critical in reviewing appraisals of partial acquisitions and easements where engineering data have to be verified.
6. Review Appraiser shall examine appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
7. If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain additional appraisal, Review Appraiser may develop appraisal documentation to recommend value.
8. The Review Appraiser and the Appraiser should discuss the appraisal assignment as soon work is assigned. The Review Appraiser and, if practical, the Appraiser should hold at least one field review in order to identify any legal issues that may exist. If any legal issues exist, the Review Appraiser shall request legal opinion.
9. All legal opinions shall be rendered by SANBAG's legal counsel and the appraisal prepared in accordance therewith.

10. The Review Appraiser's certification of the recommended value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.
11. All reports and deliverables shall typically consist of three originals, including specialty reports which may be prepared by other consultants.
12. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.
13. Additional Qualifications:
 - a. Consultant shall have a minimum five years experience as full time appraiser
 - b. Consultant shall be a member of a professionally recognized appraisal society or institute, such as the Appraisal Institute.
 - c. Consultant shall have completed a minimum ten appraisal assignments in California involving potential acquisition pursuant to the laws of eminent domain.
 - d. Consultant shall certify that Consultant has not been disciplined in the last five years as an appraiser by any government or professional association.

F. GOODWILL APPRAISAL SERVICES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide Goodwill Appraisal Services in support of SANBAG's right of way acquisition activities for current and future SANBAG Projects.

Such appraisal services may include, but are not limited to, the following work programs;

1. Appraiser shall prepare Goodwill Valuations in accordance with the California Code of Civil Procedure, and the Uniform Standards of Professional Appraisal Practice (USPAP). Appraiser must be licensed by the State of California.
2. Appraiser must be qualified to provide expert witness testimony and defend the conclusions reached in the appraisal at any Administrative or Judicial proceeding.

3. Deliverables shall typically consist of three (3) originals of the completed appraisal report.
4. Appraiser may be required to meet with and coordinate their efforts with SANBAG staff, SANBAG legal counsel, or other consultants or Caltrans staff; participate in office or project site meetings.
5. In valuing the loss of goodwill to a business, Appraiser shall rely upon the definition of fair market value found in Section 1263.320 of the California Code of Civil Procedure, and compensation for loss of goodwill as outlined in Section 1263.510 of the California Code of Civil Procedure.
6. It is the Appraiser's responsibility to contact SANBAG's staff for discussion and/or clarification of any project design matters as well as relocation sites for the business.
7. Appraiser shall work with and take direction from SANBAG legal counsel in the delivery of their reports.
8. If any legal issues exist during the course of the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by SANBAG's legal counsel.
9. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.
10. Additional Qualifications:
 - a. Consultant shall have a minimum of five years experience as a full time Goodwill appraiser.
 - b. Consultant shall be a member of a professionally recognized appraisal society or institute, such as the Appraisal Institute.
 - c. Consultant shall have completed a minimum ten Goodwill Valuation assignments in California involving potential acquisition pursuant to the laws of eminent domain.
 - d. Consultant shall certify that Consultant has not been disciplined in the last five years as a Goodwill Appraiser by any government body or professional association.

G. FURNITURE, FIXTURES, MACHINERY AND EQUIPMENT APPRAISAL SERVICES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide Furniture, Fixtures, Machinery and Equipment (F F & E) Appraisal Services in support of SANBAG's right of way acquisition activities for current and future SANBAG Projects.

Such appraisal services may include, but are not limited to, the following work program:

1. Appraiser shall prepare appraisals in accordance with the California Code of Civil Procedure, the Uniform Standards of Appraisal Practice (USPAP), the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and implemented by 49 CFR Part 24; the State of California Government Code; the State of California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations Ch 6, Art 1, Section 6000 et seq.). Appraiser must be licensed by the State of California.
2. Appraiser must be qualified to provide expert witness testimony and defend the conclusions reached in the appraisal at any Administrative or Judicial proceeding.
3. Deliverables shall typically consist of three (3) originals of the completed appraisal report.
4. Consultants may be required to meet with and coordinate their efforts with SANBAG staff, SANBAG legal counsel, or other consultants or Caltrans staff; participate in office or project site meetings.
5. It is the Appraiser's responsibility to contact SANBAG's project engineers for discussion and/or clarification of any project design matters.
6. It is the Appraiser's responsibility to contact SANBAG's legal counsel for discussion and/or clarification in identifying personal or real property.
7. If any legal issues exist during the course of the appraisal assignment, Appraiser shall request legal opinion. All legal opinions shall be rendered by SANBAG's legal counsel.
8. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the

Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.

9. Additional Qualifications:

- a. Consultant shall have a minimum five years experience as full time F F & E appraiser
- b. Consultant shall be a member of a professionally recognized appraisal society or institute, such as the Appraisal Institute.
- c. Consultant shall have completed a minimum ten F F & E appraisal assignments in California involving potential acquisition pursuant to the laws of eminent domain.
- d. Consultant shall certify that Consultant has not been disciplined in the last five years as an appraiser by any government or professional association.

H. TITLE AND ESCROW SERVICES

San Bernardino Associated Governments (SANBAG) is issuing this Request for Qualifications for a CONSULTANT to provide Title and Escrow services on an On-Call/as needed basis in support of current and future SANBAG Projects.

Title and Escrow Services conducted by the Consultants on behalf of SANBAG may include, but are not limited to, the following work program:

1. At the initiation of the work program, the Consultants shall meet with SANBAG staff regarding SANBAG's requirements for specific title work and escrow services assignments.
2. Consultant shall provide Preliminary Title Reports and Litigation Guaranties on all Fee Simple and less than Fee Simple property and property interests as requested by SANBAG.
3. Consultant shall ensure that all Preliminary Title Reports are accurate and complete.
4. Consultant shall provide all additional legal documents required by SANBAG, such as, copies of conveyance deed, deed restrictions, liens and encumbrances, title chains and the like.

5. Consultant staff shall prepare and review all legal documents necessary to ensure that SANBAG is acquiring good title to the property or property interests to be purchased, free from liens and encumbrances.
6. Consultant shall provide all necessary assistance to SANBAG to clear all exceptions stated in the Preliminary Title Reports, unless waived by SANBAG in writing.
7. Consultant shall ensure that all conditions precedent and conditions subsequent provided for in Purchase and Sales Agreements are met and satisfied prior to Close of Escrow.
8. Consultant shall prepare, subject to review and approval by SANBAG's Legal Counsel, Escrow Instructions for execution by SANBAG and the grantor(s) or grantee(s).
Consultant shall ensure that all legal requirements are satisfied prior to Close of Escrow.
9. Consultant shall provide efficient Escrow Services to SANBAG and property owners involved in SANBAG related transactions.
10. Consultant shall prepare all necessary conveyance documents; demand and release of lien/encumbrance documents and submit the same for approval by SANBAG Legal Counsel prior to close of escrow.
11. Consultant shall obtain grantor(s) Tax Identification Number, Social Security Number, Employer Identification Number or Federal Employer Identification Number prior to Close of Escrow and provide the same to SANBAG.
12. Consultant shall record all documents necessary for the acquisition of property/property rights, release of liens and encumbrances with the proper State, County and City recorder's office.
13. Consultant shall prepare an Escrow Closing Schedule in accordance with written instructions from SANBAG and property owners.
14. Consultant shall meet and coordinate its work with other right of way consultants as directed by SANBAG.
15. Immediately prior to Close of Escrow, Consultant shall order and provide SANBAG with an Updated Preliminary Title Report to ensure that no new liens and/or encumbrances are recorded on the property/property interests to be acquired by SANBAG.
16. At Close of Escrow, Consultant shall prepare and submit an Escrow Closing Statement to SANBAG and other parties to the transaction, together with copies of all documents

- conveying title to SANBAG, copies of releases of liens and encumbrances, receipt for payments made on behalf of SANBAG and the other parties to the transaction.
17. At Close of Escrow, the Consultant shall issue a Standard Owner's Policy of Title Insurance effectively insuring SANBAG's interest and ownership of the property or property rights acquired, unless an ALTA Policy of Title Insurance is requested by SANBAG.
 18. Consultant shall provide multi-lingual services as needed for efficient closing of SANBAG transactions.
 19. As requested by SANBAG, Consultant may be required to testify in any administrative or judicial proceeding.
 20. Consultant shall perform any other normal procedures and processes necessary to implement the assignment or work program and shall provide any other supporting information and/or correspondence required by SANBAG.
 21. Consultant shall assign a Project Manager, a Title Office and an Escrow Officer to this procurement, which may not be replaced without the written consent of SANBAG.
 22. If legal issues exist during Consultant's performance of services required by SANBAG, Consultant shall request legal opinion. All legal opinions shall be rendered or concurred to by SANBAG's legal counsel.
 23. As directed by SANBAG, CONSULTANT shall coordinate with other SANBAG staff and/or consultants for supplemental work required for the effective delivery of the Measure I Program and other Federally Funded Programs. Fees charged by SANBAG staff and/or consultants shall be paid directly by SANBAG.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 10

Date: September 2, 2009

Subject: SR-210 Habitat Restoration and Biological Monitoring Services

Recommendation:* Approve Amendment No. 5 to Contract No. 02-019 with LSA Associates Inc. (LSA) to extend the end date for On-call Environmental Services for SR-210, Segments 10 & 11 from September 5, 2009 to June 30, 2011.

Background: **This is an amendment to an existing contract.** This amendment is a contract time extension only that will allow the completion of the habitat restoration monitoring task related to biological permit requirements for construction of the State Street Storm Drain. The purpose of the original contract was to perform environmental services for the SR-210 extension project.

On September 5, 2001, Contract No. 02-019 with LSA was approved by the SANBAG Board of Directors for environmental services related to the eastern segments of the SR-210 extension project. The scope of work was to provide assistance in securing various environmental permits and construction monitoring services. Amendment 1 was approved in February 2005 which added various additional tasks to the scope of the contract including implementing a worker awareness program for and translocation of San Bernardino Kangaroo Rats (SBKR) which was then just listed as an endangered species under the Federal Endangered Species Act. Amendment 2 was approved in June 2005 to include an environmental re-evaluation to address the high-speed freeway to freeway connectors with I-215, the Pepper Avenue Interchange ramps, and various local street improvements.

*

Approved
Board of Directors

Date: September 2, 2009

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

On January 4, 2006, amendment 3 was approved to add biological monitoring to the scope of the original contract for SBKR habitat restoration services. The SBKR habitat monitoring task is part of biological permit requirements related to construction of the State Street Storm Drain. The habitat restoration monitoring and reporting period required by the biological permit is five years; as such, the habitat restoration monitoring task will be completed by January 2011. SANBAG staff recommends an additional six months to the LSA contract beyond January 2011 to allow time to coordinate with the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) on the permit closeout.

Amendment 4 was approved in September 2008 to increase the contract amount in order to fund the remaining tasks in the contract. Amendment 4 included professional services associated with preliminary investigation of environmental mitigation properties for future SANBAG projects.

This amendment is only an extension of the contract period of performance and does not propose any changes to the contract amount.

Financial Impact: This item is consistent with the FY 2009/2010 budget.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on August 13, 2009. SANBAG Counsel has reviewed and approved the amendment as to form.

Responsible Staff: Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. 02-019-05
by and between
San Bernardino County Transportation Authority
and
LSA Associates Inc.
for
Environmental Services for SR-210, Segments 10 & 11

FOR ACCOUNTING PURPOSES ONLY

<input checked="" type="checkbox"/> Payable	Vendor Contract # <u>03015</u>	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>LSAAI</u>		<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>350,000</u>	Previous Amendments Total: \$ <u>558,000</u>
	Previous Amendments Contingency Total: \$ <u>0</u>
Contingency Amount: \$ <u>0</u>	Current Amendment: \$ <u>0</u>
	Current Amendment Contingency: \$ <u>0</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → **\$ 908,000**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts

Original Board Approved Contract Date: <u>9/5/01</u>	Contract Start: <u>9/5/01</u>	Contract End: <u>9/5/09</u>
New Amend. Approval (Board) Date: <u>9/2/09</u>	Amend. Start: <u>9/2/09</u>	Amend. End: <u>6/30/11</u>

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>09/10</u> \$ _____	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? ☐ Yes ☒ No

If yes, which Task includes budget authority? 824

If no, has the budget amendment been submitted? ☐ Yes ☒ No

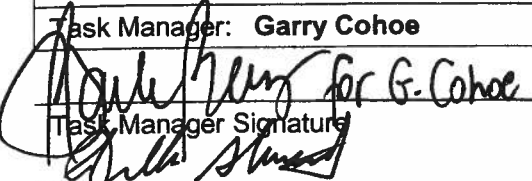
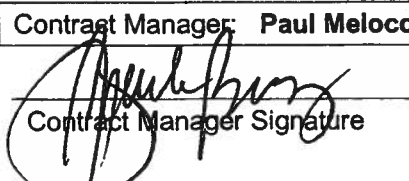
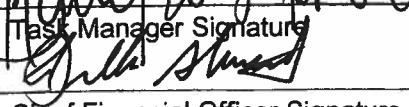
CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☐ Intergovernmental ☒ Private ☐ Non-Local ☐ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☒ No ☐ Yes _____ %

Task Manager: Garry Cohoe	Contract Manager: Paul Melocoton
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 Task Manager Signature Date <u>8/24/09</u>	 Contract Manager Signature Date <u>8/24/09</u>
 Chief Financial Officer Signature Date <u>8/24/09</u>	

CONTRACT NO: 02-019-05

Amendment No. 5

Agreement By And Between

**San Bernardino
County Transportation Authority**

and

LSA Associates Inc.

for

Environmental Services for SR-210, Segments 10 & 11

This AMENDMENT No. 5 to CONTRACT No. 02-019 entered into this 2nd day of September, 2009 by the firm of LSA Associates Inc. (hereafter called CONSULTANT) and the San Bernardino Associated Governments/San Bernardino County Transportation Authority (hereafter called AUTHORITY):

WITNESSETH,

WHEREAS, AUTHORITY, under Contract No. 02-019, has engaged the services of CONSULTANT to provide environmental services for State Route 210 Segments 10 & 11; and,

WHEREAS, the parties hereto desire to amend the aforesaid contract to extend the period of performance to complete the portion of work referred to as SR-210 Segments 10 & 11.

NOW THEREFORE, the parties hereto do mutually agree to amend Contract No. 02-019 as follows:

1. The period of performance under this Contract shall be extended to June 30, 2011.
2. Except as amended by this Amendment, all other provisions of Contract No. 02-019 and Amendments 02-019-01, 02-019-02, 02-019-03, and 02-019-04 remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

LSA Associates Inc.

By: _____
Rob McCann
President

Date: _____

San Bernardino Associated Governments

By: _____
Paul M. Eaton, President
SANBAG Board of Directors

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Jean-Rene Basle
SANBAG Counsel

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

AGENDA ITEM: 11

Date: September 2, 2009

Subject: Agreement Amendment for Pepper Avenue Extension to SR-210 in the City of Rialto

Recommendation:* 1. Approve Amendment No. 3 to Contract No. 00-067 with the City of Rialto extending the time in which the City is to complete the extension of Pepper Avenue to SR-210 to November 30, 2012.

2. Stipulate that this is the final amendment to Contract No. 00-067 with respect to extending the time in which the City is to complete the extension of Pepper Avenue to SR-210 except for any delays resulting from unforeseen litigation challenging the findings of the environmental document for the Project.

Background: **This is an amendment to an existing contract.** The purpose of this amendment is to allow the City sufficient time to complete the design, obtain the required environmental clearances, and construct the extension of Pepper Avenue to SR-210. This roadway extension is required to provide sufficient utility to justify the construction of the SR-210/Pepper Avenue Interchange ramps.

In March 2000, the SANBAG Board of Directors approved Contract No. 00-067 with the City of Rialto which established the responsibilities for funding, design, and construction of the Pepper Avenue extension and the SR-210/Pepper Avenue

Approved
Board of Directors

Date: September 2, 2009

Moved: _____ *Second:* _____

In Favor: _____ *Opposed:* _____ *Abstained:* _____

Witnessed: _____

Interchange. Timing of the construction of the Pepper Avenue extension, as required by Caltrans and the Federal Highway Administration (FHWA), was intended to occur prior to or concurrent with the construction of SR-210 Segment 10. Caltrans and FHWA required this timing for the Pepper Avenue extension so the SR-210/Pepper Avenue Interchange would provide sufficient utility. With this understanding, Caltrans and FHWA allowed the design of the interchange to proceed and the undercrossing structure to be constructed.

The agreement established a commitment for the City to secure funding for the extension of Pepper Avenue by July 28, 2000. In the contract, if the City was unable to identify funding for the roadway extension, either one of two scenarios would occur:

1. SANBAG will remove the design of the proposed interchange from the SR-210 plans and the City would reimburse SANBAG for the cost of the design engineering, or
2. SANBAG would construct the Pepper Avenue undercrossing bridge and the City would reimburse SANBAG for the entire construction costs associated with the bridge. Under this option, SANBAG will not be responsible for the construction nor the cost of constructing the interchange ramps in the future.

On July 5, 2000, the City requested a 90-day extension to allow more time for the City to identify funding for the proposed Pepper Avenue extension. On August 2, 2000, the SANBAG Board of Directors approved Amendment 1 which extended the City's time limit to secure funding for the roadway extension from July 28, 2000 to October 28, 2000. In October 2000, the City, along with the City of Colton, the County of San Bernardino, and Sunwest Developers appropriated funds to meet the requirements of the amendment.

On March 7, 2001, the SANBAG Board of Directors approved Contract No. 01-078 which awarded the City \$826,000 in federal Surface Transportation Program (STP) funds. Adding a local match of \$240,000 comprised of contributions from the funding sources mentioned above, the City was able to raise approximately \$1.07 million towards the construction of the Pepper Avenue extension.

In October 2003, based on the recommendations in the agenda staff report that considers significant increases in scope and cost and significant environmental issues for the Pepper Avenue extension, the SANBAG Board of Directors

approved Amendment 2 which allowed a 72-month extension of the construction completion milestone based on a schedule that was established by the City. The amended agreement required that the City complete the design and obtain the necessary environmental clearances by no later than November 1, 2008 and construct the roadway extension by November 1, 2009. At this point in time, the Pepper Avenue undercrossing structure was constructed with the construction of SR-210 Segment 10; however, the ramps could not be added since the extension of the Pepper Avenue was not complete. In this amendment, SANBAG agreed to design and construct the ramps for the proposed SR-210/Pepper Avenue Interchange provided that the City is able to construct the Pepper Avenue extension within the timeframe stated above. The amendment also states that if the City is not able to construct the roadway extension by November 1, 2009, the City shall reimburse SANBAG for the full cost of design and construction of the Pepper Avenue undercrossing bridge structure.

On May 2, 2005, a notice from SANBAG was sent to the City that indicated Contract No. 01-078 had been cancelled because the funds were not obligated by the required date per the "use it or lose it" provisions of the STP program. The delay was attributed to unforeseen environmental and other issues that have caused major delays in the obligation of construction dollars.

On April 22, 2009, the City issued a letter to the SANBAG Executive Director requesting a 30-month extension of the time limit established in Amendment No.2 for the Pepper Avenue extension. The stated reasons for the delay were primarily attributed to environmental challenges. On April 29, 2009, the City issued a letter with a new schedule for the Pepper Avenue extension milestones. The major milestones that were provided in the letter are summarized below:

Complete Environmental	October 2009
Advertise for Construction Bids	May 2010
Notice of Completion to SANBAG	May 2012

SANBAG is recommending that the milestone dates included in the amended agreement include a six-month contingency be added to the City's schedule. This requires that the City construct the extension and provide SANBAG a Notice of Completion of construction by November 30, 2012. The provisions within the original contract whereby the City is required to reimburse SANBAG for the cost of the engineering and construction of the Pepper Avenue undercrossing bridge structure will take effect in the event the City does not meet the November 30, 2012 milestone.

Lastly, staff is recommending that the board stipulate that this is the last time an extension will be granted. Since the environmental document for SR-210 was approved, environmental requirements and mitigation in general have increased, resulting in higher cost and time that would be required to obtain environmental compliance for the construction of the SR-210/Pepper Avenue Interchange Ramps. Also taking into consideration the average annual escalation of costs for construction materials, further postponements could result in substantially higher costs for SANBAG related to constructing the SR-210/Pepper Avenue Interchange ramps.

Because of these delays, SANBAG is behind in upholding their commitment to FHWA and Caltrans related to Pepper Avenue. In addition, this delay has tied up approximately \$10 million of capital funding.

The recommendation of this agenda item to the Major Projects Committee as presented in the August 13, 2009 meeting was to stipulate that this is the last time extension for the City without any exceptions. Committee member Mr. Ed Scott recommended adding a clause that allows a future time extension if there is unforeseen litigation that challenges the findings in the environmental document for the Project. The recommendation to revise the agenda item and cooperative agreement was approved by the Major Projects Committee and is reflected in this Board of Directors agenda and attached cooperative agreement.

Financial Impact: This item does not have a direct financial impact.

Reviewed By: This item was reviewed and unanimously recommended for approval by the Major Projects Committee on August 13, 2009. SANBAG Counsel has reviewed and approved the amendment as to form.

Responsible Staff: Garry Cohoe, Director of Freeway Construction

Pepper Avenue Cooperative Agreement - Summary of Commitments

No.	Milestone/Action	Responsibility	Agreed Completion Date	Milestone Met?	Notes
Original Cooperative Agreement (No. 00-067) - Executed March 29, 2000					
1	Geometric and Structural Design of the Pepper Avenue Interchange	SANBAG	April 7, 2000	Yes	The milestone specified in the contract where SANBAG would suspend further design work on the proposed interchange is at completion of the Caltrans Type Selection process; the agreement further states that no additional work related to the interchange shall be provided by SANBAG until the City is able to meet their commitments in the contract.
2	Secure funding commitments for Pepper Avenue Extension	City	July 28, 2000	No	<p>If the City does not meet this milestone, one of the following would occur:</p> <p>(A) SANBAG shall remove the design of the Pepper Interchange (Ramps and Bridge) from the SR-210 design plans and the City shall reimburse Caltrans for the design work, ROW costs, and environmental mitigation cost.</p> <p>(B) SANBAG will retain the design of and will construct the Pepper Avenue Overcrossing (without the ramps) and the City shall reimburse SANBAG for the actual construction cost of the structure. Under this option, SANBAG will not be responsible for the construction or cost of the ramps in the future.</p> <p>If the City is able to secure funding commitments for the Pepper Avenue extension, SANBAG would continue with the design of the SR-210/Pepper Avenue Interchange. The time limit that was established was intended to ensure that the construction of the Pepper Avenue extension occurred prior to or concurrent with the construction of SR-210 Segment 10.</p>
3	Obtain environmental clearance, design, advertise, and construct the Pepper Avenue extension	City	Not Specified	No	
Amendment No. 1 (No. 00-067-01) - 90-Day Extension of Funding Responsibilities - Executed August 21, 2000					
4	Secure funding commitments for the Pepper Avenue roadway extension	City	October 28, 2000	Yes*	<p>In October 2000, the City, along with the City of Colton and the County of San Bernardino, were able to allocate local funds to meet the funding requirements of the agreement. In 2001, the City applied for and was allocated STP funds by SANBAG for the Pepper Avenue extension (Contract 01-078).</p> <p>* Because the STP funds for the Pepper Avenue extension was not obligated by the "use it or lose it" date as specified in the program, SANBAG cancelled the funding and closed the contract with the City on May 2, 2005.</p>
Amendment No. 2 (No. 00-067-02) - Executed December 2, 2003					
5	Construct Pepper Avenue Undercrossing and Preserve ROW for Pepper Avenue Interchange Ramps	SANBAG	Not Specified	Yes	In order to avoid schedule impacts to the SR-210 project, the ramps were removed from the final plans; however, the Pepper Avenue undercrossing structure was constructed to allow for future improvement.
6	Provide SANBAG with a detailed accounting of the funding commitments, environmental compliance, and completed PS&E	City	November 1, 2008	No	The City was able to obtain \$826,000 in STP funds in March 2001 (Contract 01-078) plus a local match of \$240,000 totaling in approximately \$1.1 million. According to the agenda staff report for the March 2001 SANBAG board meeting, the City was able to meet the funding requirement of the agreement. At the time, the design of the roadway extension was not completed nor was the environmental compliance achieved.
7	Construct Pepper Avenue extension	City	November 1, 2009	N/A**	<p>** Milestone deadline has not yet lapsed. Currently, the design of the Pepper Avenue extension has not been completed nor has environmental compliance been achieved.</p> <p>If the City does not meet this milestone, the agreement specifies that the City shall reimburse SANBAG for the full cost of the Pepper Avenue undercrossing structure. Costs will include cost of construction and cost of design engineering.</p>
8	Fund, design, and construct the SR-210/Pepper Avenue Interchange Ramps	SANBAG	Not Specified	N/A***	***The Pepper Avenue extension was not constructed, therefore, work on the SR-210/Pepper Avenue Interchange was suspended.

SANBAG Contract No. 00-067-03
By and Between
San Bernardino Associated Governments

and
The City of Rialto

for
Pepper Avenue Extension to State Route 210

FOR ACCOUNTING PURPOSES ONLY

<input type="checkbox"/> Payable	Vendor Contract #	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID	<input type="checkbox"/> Yes ____ % <input type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>0</u>	Previous Amendments Total: \$ <u>0</u>
	Previous Amendments Contingency Total: \$ <u>0</u>
Contingency Amount: \$ <u>0</u>	Current Amendment: \$ <u>0</u>
	Current Amendment Contingency: \$ <u>0</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ 0

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts

Original Board Approved Contract Date: 3/15/00 Contract Start: 3/15/00 Contract End: 12/31/02
New Amend. Approval (Board) Date: 9/2/09 Amend. Start: 9/2/09 Amend. End: 11/30/12

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>09/10</u> \$ <u>0</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? ☐ Yes ☐ No
If yes, which Task includes budget authority? _____
If no, has the budget amendment been submitted? ☐ Yes ☐ No

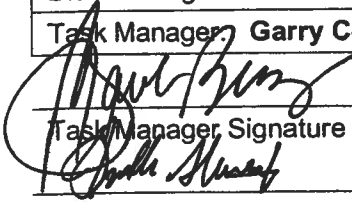
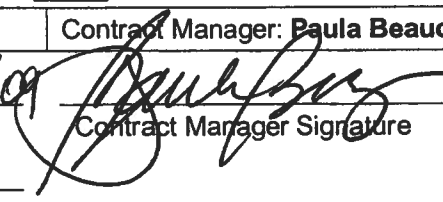
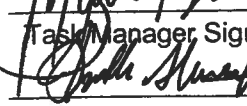
CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☒ Intergovernmental ☐ Private ☐ Non-Local ☐ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☒ No ☐ Yes ____ %

Task Manager: **Garry Cohoe** Contract Manager: **Paula Beauchamp**

 Task Manager Signature	 Contract Manager Signature
 Chief Financial Officer Signature	Date

CONTRACT NO: 00-067-03

Amendment No. 3

Agreement By And Between

San Bernardino County Transportation Authority

and

The City of Rialto

Pepper Avenue Extension to State Route 210

This AMENDMENT No. 3 to CONTRACT No. 00-067 entered into this 5th day of August, 2009 by the San Bernardino County Transportation Authority (hereafter called SANBAG) and the City of Rialto, a municipal corporation of the State of California (hereafter called CITY) for the establishment of responsibilities for the environmental compliance work, design, funding, and construction of the Pepper Avenue extension to the proposed State Route 210/Pepper Avenue Interchange (hereafter called PROJECT).

WITNESSETH,

WHEREAS, the PROJECT is required to satisfy Caltrans and FHWA reviewers that adequate utility is present to complete the design and construct the proposed State Route 210/Pepper Avenue Interchange ramps (hereafter called RAMPS); and

WHEREAS, the roles and responsibilities of the CITY and SANBAG were agreed to in Cooperative Agreement No. 00-067 as amended by Amendment No. 00-067-01 and Amendment No. 00-067-02; and

WHEREAS the CITY has notified SANBAG that it has been unable to meet the conditions as stipulated in Contract No. 00-067 and Amendments No. 00-067-01 and Amendment No. 00-067-02; and

WHEREAS SANBAG and the CITY have agreed to new conditions for the work associated with the PROJECT and the RAMPS.

NOW THEREFORE, the parties hereto do mutually agree to amend Contract No. 00-067 as follows:

1. The first paragraph of Amendment No. 00-067-02 shall be superseded and replaced by the following:

The City shall secure funding commitments and source(s) to construct the PROJECT in whole. The CITY shall provide SANBAG with a detailed accounting of funding

commitments and sources by November 30, 2010. The City shall have the environmental clearances, a complete design package, acquired the Right of Way necessary to construct the PROJECT, and be ready to advertise for construction bids on the PROJECT by the milestone date of November 30, 2010.

The City shall construct the PROJECT and provide SANBAG a Notice of Completion for the PROJECT no later than the milestone date of November 30, 2012. The CITY shall be responsible for gaining environmental clearance, designing, and constructing the PROJECT in order to satisfy both Caltrans and FHWA reviewers that Pepper Avenue will provide adequate utility to justify the construction of the RAMPS.

The CITY shall reimburse SANBAG the full cost of the Pepper Avenue undercrossing structure (including both left and right bridges) (hereafter called BRIDGES) if for any reason the City does not complete construction of the PROJECT and provide SANBAG a notice of Completion no later than November 30, 2012. Said costs will include the cost of construction (to be determined by actual payments to the construction contractor for the bridge items) and the cost of design engineering for the BRIDGES. The design engineering costs for the BRIDGES, as stipulated in Contract 00-067, will be calculated by multiplying the engineering cost of all Segment 10 by the proportion of the construction costs for the BRIDGES plus the estimated ramp construction costs divided by the overall Segment 10 construction costs.

SANBAG shall be responsible for funding design engineering, obtaining environmental compliance, and constructing the RAMPS provided that the CITY submits a Notice of Completion for the PROJECT by November 30, 2012. If it becomes unreasonable to construct the RAMPS due to excessive costs related to but not limited to high environmental mitigation costs or steep escalation of construction related costs, or difficulty with obtaining project approval from Caltrans for the construction of the RAMPS, the CITY and SANBAG shall agree to work cooperatively to develop alternative solutions.

This Amendment shall be the final amendment regarding any extension of time for the CITY to meet any milestone dates or to complete any milestone work for the extension of Pepper Avenue to SR-210 except for unforeseen litigation filed against the CITY which challenges the findings of the environmental document of the PROJECT.

2. Paragraphs 3 through 17 of Contract No. 00-067 and all previous amendments not affected by this Amendment No.3 shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

City of Rialto

By: _____
Grace Vargas, Mayor
City of Rialto

Date: _____

San Bernardino Associated Governments

By: _____
Paul M. Eaton, President
SANBAG Board of Directors

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Jean-Rene Basle
SANBAG Counsel